CENSORS OF CREATIVITY

A study of censorship of artistic expressions in Egypt

CENSORS OF CREATIVITY

A study of censorship of artistic expressions in Egypt

Cover & pages by: ADAM DOTT

ISBN:

FREEMUSE
FREEDOM OF MUSICAL EXPRESSION

Nytorv 17 · 1450 Copenhagen K · Denmark
www.freemuse.org
+45 33 32 10 27

afte Association for Freedom of Thought and Expression

4, Ahmed Basha St, 6th Floor,
Garden City, Cairo, Egypt
ahmed.ezzat@afteegypt.org
www.afteegypt.org
+201275206325

RESEARCH TEAM

Ahmed Ezzat

Is a lawyer and human rights researcher. He has worked in defense of human rights since 2003 and focused on defending freedom of expression cases since 2007. He is the director of the legal unit at AFTE and the principal author of the study.

Sally al-Haqq

Is a researcher at AFTE interested in civil liberties and human rights, specifically freedom of expression and gender studies. She conducted and edited the interviews cited in this study.

Hossam Fazulla

Is a researcher at AFTE with the creative freedom program, interested in issues of freedom of expression and opinion, artistic freedom, digital liberties, and civic education. He conducted and edited the interviews cited in this study.

Table of contents

Acknowledgements

The study team would like thank Ole Reitov, the Executive Director of Freemuse, for his helpful comments on the study, particularly in the sections on legislative and administrative instruments for censorship of artistic expression in Egypt. Austin Dacey, an author and human rights activist who serves as UN advisor to Freemuse, also provided insightful feedback on the sections on the regulation of freedom of artistic expression sections in international law and human rights conventions. Finally, we are grateful to Khuloud Saber, the assistant director of AFTE, who managed the cooperative efforts between the two organizations

ORGANIZATIONS

AFTE - The Association for Freedom of Thought and Expression, is an Egyptian organization established in 2006 by a group of lawyers and researchers to defend freedom of expression through providing legal support to victims and documenting violations of freedom of expression in all its forms.

FREEMUSE – The World Forum on Music and Censorship is an independent international membership organization advocating and defending freedom of expression for musicians and composers worldwide. Freemuse has Special Consultative Status with the United Nation's Economic and Social Council, ECOSOC, since 2012

THANKS

The organizations would like to express their gratitude to all artists and cultural operators who provided important background information and to the Norwegian Ministry of Foreign Affairs, Section for Cultural Affairs for funding the project.

PREFACE

Culture and artistic expression has been recognized by the UN as an “essential component of human development and an important factor in the fight against poverty.” By artistically addressing issues in public space artists have proven their ability to bring counterweights to existing power centers in many developing countries. However artistic expressions come under particular attack because they can convey specific messages and articulate symbolic values in a powerful way, or may be considered as doing so. The effects of censorship or abusive restrictions of the right to artistic freedom of expression are devastating. They generate huge cultural, social, and economic losses in societies, deprive artists of their means of expression and livelihood, and create an unsafe environment for all engaged in the arts and their audiences; they sterilize debates on human, social, and political issues.

In June 2013 the UN special rapporteur in the field of cultural rights, Ms Farida Shaheed, presented a report to the UN Human Rights Council. In the report, “The Right to Artistic Freedom and Creativity,” the special rapporteur concluded that “the effects of art censorship or unjustified restrictions of the right to freedom of artistic expression and creativity are devastating.”

The Special Rapporteur noted that ”in a large number of cases, States resort to imposing restrictions authorized under international law in inappropriate or abusive ways, favoring some worldviews over others. Consequently, stakeholders lose confidence in State institutions, leading to a loss of credibility of Governments, including when they legitimately impose limitations in accordance with articles 19 (3) or 20 of ICCPR.[2] This effect is amplified when rules are ambiguous and procedures are not transparent.”

The rapporteur recommended that ”states should abolish prior-censorship bodies” and suggested the use of “classification bodies...for the sole purpose of informing parents ...and

only in the areas of artistic creation where this is strictly necessary due in particular to easy access by children."

The rapporteur underlined that problems regarding violations have not been addressed systematically—if at all—by intergovernmental organizations. Reporting on human rights violations of artistic freedom of expression is so far non-existent in the UN Human Rights Council's (HRC) Universal Periodic Reviews (UPR) of the human rights situation in member states.

This study is a response to the call of the special rapporteur. The study team conducted research from September 2013 to January 2014. They undertook a comprehensive survey of local laws and international conventions related to freedom of artistic expression. The team also interviewed numerous artists in various creative fields, including cinema, theater, and music, and documented several cases from Egyptian courts related to censorship of the arts in Egypt. AFTE and Freemuse solicited feedback from several experts in the field, whose observations proved extremely valuable to the research team.
The study is a collaboration between the Association for Freedom of Thought and Expression (AFTE) and Freemuse -the World Forum on Music and Censorship.

Major international human rights organizations in their reports on freedom of expression focus entirely on media. It is the hope of AFTE and Freemuse that this study will inspire others to address violations on artistic freedom in other countries.

The Human Rights Council at its 20th session (Oct-Nov 2014) will examine Egypt's human rights record. AFTE and Freemuse have submitted a UPR report with recommendations. The submission is based on findings in the study you are reading now.

Ole Reitov	Emad Mubarak
Executive Director	Executive Director
Freemuse	AFTE

2.International Covenant on Civil and Political Rights.

INTRODUCTION

This study explores the primary legislative and institutional restrictions on freedom of artistic expression in Egypt. It analyzes the legal framework governing the censorship of artistic works and the standards used by the various censorship bodies in the course of their work. The study provides a number of recommendations to restructure the censorship apparatus and replace it with another system based on different criteria, such as an age-appropriate classification of artistic works that does not infringe on the content of the work or impose a specific point of view on its creator.

Using examples and case studies, this study examines cases in which artists were subjected to censorship. Some artists yielded to the wishes of the censor, while others challenged them and took the matter up with the courts.

This study also aims to encourage the authorities to take positive steps to liberate the arts from all forms of paternalistic oversight.

Since Law 430/1955 was issued to regulate censorship, no change has been made to the way the censorship of freedom of expression operates in Egypt. Despite the passing of successive regimes and governments, a common political will persists that rejects artistic freedom—ostensibly to protect the public order, public morals, and the higher interests of the state —without consideration for the catastrophic impact that censorship has had on the development of culture in Egypt, both in terms of the restrictions on artistic freedom and the repercussions for the culture industry.

The study highlights the failure of legislation in Egypt to address freedom of artistic expression and looks at the status of freedom of expression in the 1971 and 2012 constitutions, as well as the constitution approved in a referendum on January 14 and 15, 2014.

The study discusses the principal international standards for freedom of artistic expression, including, for example, Article 19 of the International Covenant on Civil and Political Rights and Article 15 of the International Covenant on Economic, Social and Cultural Rights, as well as the explanatory comments for each. Both conventions have been ratified by Egypt and are thus binding. The study also looks at reports on freedom of expression and artistic freedom issued by the UN special rapporteur in the field of cultural rights, along with other standards, with a view to highlighting the inconsistencies between Egyptian legislation regulating artistic expression and these standards. Significantly, several recommendations included in the report issued by the UN Human Rights Council's Working Group on the Universal Periodic Review (UPR) in 2010 did not enjoy the support of Egypt and thus remained unimplemented. These included recommendations that urged a wholesale review of Egyptian human rights laws to bring them into line with Egypt's international obligations, which it pledged to uphold before the Human Rights Council and in its country report.[3]

The study concludes with several recommendations to the Egyptian government on the need to reform the current legislative and institutional apparatus of censorship, with the goal of lifting the conservative restrictions imposed by these laws on grounds that contravene human rights standards and basic liberties.

SUMMARY

Artistic expression in Egypt is one of the most tightly controlled forms of expression, subject to numerous restrictions, both official, in the form of laws, regulations, and state institutions charged with implementing these codes, and social, in the form of constraints imposed by mainstream culture, particularly when the art addresses one of the three historically controversial topics of politics, religion, and sex.

Historically, art in all its forms played a vital role in challenging values and practices inimical to individual freedom and human rights, which took shape to codify and legitimize repression in all its forms. At times, this repression is explicitly politically motivated, deployed to defend the ruling authority against any criticism aimed at changing it or unveiling their abuse of power. At other times, repression is manifested as a rejection of sexual relationships that deviate from the socially acceptable norm of a man and a woman bound by the institution of the family. According to censorship laws and regulations, any work of art that portrays other types of relationships, such as homosexual ones, threatens the social and religious values of the Egyptian people and thus is not permitted a public airing.

Religion is another red line that, according to censorship laws and regulations, cannot be transgressed by artistic works. In general, Egyptian laws do not guarantee freedom of religious expression, particularly if the work contains some direct or indirect critique of the Abrahamic religions (Islam, Christianity, and Judaism) or raises sensitive questions about widely accepted religious issues. This has repercussions for artistic expression, throwing up heavy obstacles before works of art that broach issues related to freedom of belief, criticize the Abrahamic religions, or promote a religion not recognized by the state and society.

The Egyptian authorities justify the censorship of works of art that address any of these three topics by citing the need to protect the public order, public morals, and the higher interests of the state.

Chapter one of this study discusses the legal framework governing the censorship of artistic works, analyzing the current law on the censorship of audio and visual works issued in 1955, pursuant to the constitutional declaration of February 10, 1953.[4]

Law 430/1955 regulates the censorship of visual and audiovisual works. Under the law, the censorship regime applies to anything related to the recording or filming of audio or visual materials, the copying, distribution, sale or display of them, and the public performance or dissemination of any work of art subject to the provisions of the law. The law delegates censorship powers to the Ministry of Culture and authorizes it to grant or deny the permits required by artistic works as a condition for legality. This chapter looks at the instruments for prior and post censorship established by the law, as well as appeal procedures before the licensing bodies.

Chapter two turns to the administration of the censorship process, the remit of the Ministry of Culture's General Directorate for the Censorship of Artistic Works. The implementing regulations of Law 430/1955, issued in Prime Ministerial Decree 162/1993, define the directorate's competencies. Under the regulations, the directorate grants permits to film, record, perform, screen, or broadcast these works, as well as distribute, rent, circulate, sell, display for sale, or adapt them for use. The implementing regulations do not permit the directorate to grant a permit to any work that broaches certain topics—specifically, those related to non-mainstream views of matters of religion, sex, or politics, particularly if the art work advocates atheism or disparages the Abrahamic religions, portrays vices or drug use in a way to encourage them, or includes provocative sexual scenes.

Chapter three analyzes the criteria for the censorship of art. Minister of Information and Culture Decree 220/1976 on guidelines for the censorship of artistic works states in Article 1 that "the censorship of artistic works, referenced in Law 430/1955, aims to elevate their artistic level, to affirm society's values (religious, spiritual, and moral), and to develop public culture and foster the creative energies of artistic expression. It also aims to preserve public morals and the public order and to protect youth from deviance." This chapter explores how artistic freedom in Egypt is circumscribed by the application of moral standards that arbitrarily limit freedom of artistic expression, contravening even those permissible limitations of freedom of expression defined in international human rights law.

Chapter four of the study looks at the censorship of freedom of artistic expression through the criminal code. The many articles in the Egyptian Penal Code that curtail artistic freedom have ensnared numerous artists. These include articles criminalizing the publication of any content that impinges on public decency, others that criminalize the "defamation" of religions, and other designed to protect individuals and institutions from crimes of insult. All of these are extremely conservative and obstruct freedom of artistic expression. In fact, they often lead artists to self-censor in fear of legal consequences.

The Penal Code also carries penalties for various types of incitement without consideration for the context of the incitement or the intention of the offender, in contravention of international human rights law, jurisprudence on incitement, and best practices for differentiating legally permissible and legally impermissible expressions.

The artistic professional syndicates also play a role in the censorship of artists in cinema, theater, television, and music. Chapter five discusses Law 35/1976 on the artistic syndicates, which impose bureaucratic procedures and substantial financial costs on artists seeking to practice their art. No person may practice an art associated with the acting profession, film profession, or music profession without being a member of the relevant professional syndicate or obtaining a work permit from it in exchange for a fee that confers none of the other benefits of syndicate

membership. Law 35 carries penalties for those who violate its provisions.

It was hoped that the mass uprising in Egypt on January 25, 2011, would have positive consequences for the freedom of artistic expression in the constitution, but none of the constitutional declarations that followed the suspension of the 1971 constitution—and this includes the 2012 constitution approved in a referendum during the rule of the Muslim Brotherhood—adequately protected freedom of artistic expression from the predations of ordinary legislation seeking to curb it. In turn, existing legislation restricting this freedom remains unchanged. The fifty-member committee tasked with amending the 2012 constitution, which was suspended pursuant to the constitutional declaration of July 4, 2013, took no positive steps to abolish the system of prior censorship of the arts or prohibit the confiscation of works of art. On the contrary, as discussed in chapter six, in the article on freedom of artistic expression, it gave the Public Prosecution the right to bring criminal charges against artists and allowed liberty-depriving penalties for defamatory art works.

Egypt has ratified several international conventions that uphold freedom of expression and creative freedom, such as the International Covenant on Civil and Political Rights, which guarantees freedom of expression in Article 19, and the International Covenant on Economic, Social, and Cultural Rights, which guarantees creative freedom in Article 15, as well as several recommendations issued by the special rapporteur in the field of cultural rights on freedom of artistic expression. Nevertheless, in practice Egypt has not met its international commitments.

Chapter seven discusses international standards relevant to freedom of artistic expression as well as the limitations to freedom of expression allowed by international law, which aim to prevent conflicts between freedom of expression and the exercise of other rights and liberties protected by international law.

The eighth and final chapter of the study includes case studies of artists taken from the last four years, covering the last year of Mubarak's rule and the first three years of the Egyptian revolution. Despite the dramatic political changes wrought by the revolution, these have had no impact on the severe censorship of freedom of expression on either the legislative or institutional level. This chapter includes three testimonies by film and musical artists about the status of freedom of artistic expression in Egypt, censorship they have faced, and their opinions on the practices and effects of the censorship regime.

This study also includes 17 case studies devoted to individual instances of censorship, cited as evidence of the Egyptian authorities' negative practices when it comes to issues of artistic freedom. In some of the case studies, censorship came in the form of lawsuits while in others it was exercised in the form of administrative decrees within the government media apparatus (the Egyptian Radio and Television Union).

3.Working Group for Egypt UPR, Human Rights Council, 14th session, item 6 on the UPR agenda.
4.The constitutional declaration of Feb. 10, 1953 legalized the seizure of power by the Free Officers, led by Gamal Abd al-Nasser. Despite the political and social changes seen by Egypt since that time, the legal framework for the censorship of artistic expression remains the same.

CHAPTER ONE

Legal framework for the censorship of art: bureaucracy and prior censorship

In establishing a legal framework for the censorship of works of art, the legislator adopted a system of both prior and post-censorship by requiring artists to obtain a permit before taking any action to bring their art work to the public and obligating artists to return to the licensing body for a new permit when the old one expires. This places the work of art in question at the permanent mercy of the censoring authority.

Law 430/1955 regulating the censorship of moving and still images, songs, plays, monologues, records, and audio recordings, amended by Law 38/1992,[5] establishes the general legal framework for the censorship of works of art. Article 1 of the law states that the objective of the censorship of cinema, theater, musical works, and the performing arts is to protect the public order, public morals, and the higher interests of the state.

The law does not explain what it means by these three protected categories or include a legal definition that could be used as a standard by those tasked with implementing the law, in order to prevent any arbitrary infringements of freedom of artistic expression, which is particularly important given the overly broad and vague language used. In fact, no Egyptian law contains a precise definition of these phrases. This constitutes a danger to freedom of artistic expression, opening it up to arbitrary interpretation and potential restrictions imposed by those bodies authorized to censor art and artists.

Law 430/1955 authorizes the Ministry of Culture to censor audio and audiovisual works.[6] It prohibits recording, filming, copying, or adapting audio or audiovisual works, as well as screening,

performing, or broadcasting them in a public place, without a permit from the ministry. It thus establishes a regime of prior censorship, meaning that the censoring body examines the art work before it reaches the public to determine whether to permit its release or deny it a permit. Using these standards, the law imposed oversight not only on the creation of a work of art, but also on any future development or change by its creator. This gives censors the authority to interfere in the content of an art work, excising or amending what they deem incompatible with the public order, public morals, or higher state interests.

Censorship is not limited to the content and format of the work, but touches on the artist's right to present his work to the public, which is an indivisible part of the freedom of artistic expression. Such freedom cannot be said to exist if the artist cannot reach the public without compromising creative freedom and the freedom of artistic production.

The law makes permits temporary, with the expiry period defined by the law. Under Article 5, this period is set at one year from the date of issuance for filming or recording and ten years for screening, performance, or broadcast. The censorship authority can also specify the venues in which the permit applies. For the export of artistic works, the permit is valid for one month and only applies to the state or states specifically noted.

As is clear, censorship operates on the level of time and place, as well as content. A work may not be shown, performed, or rerecorded after the permit expires, which creates a permanent bond between the censorship apparatus and the art work that is revived when the permit expires. This puts the work at the mercy of the censor's authority not only for one time, but for all time. Nor can a work of art be shown or performed at a place other than that specified by the permit; otherwise, it is in breach of the law.

The law grants the censorship authorities the power to revoke a permit granted to a work of art if required.[7] This demonstrates the severity of the restrictions imposed on the freedom of artistic expression by the law: the competent bodies possess the power not only to grant permits, but to revoke them as well, although the law does not specify the standards or causes that should be cited by the censor to revoke a permit, leaving it to the body in question to state its reasons in the revocation order.

Law 430/1955 also establishes a system to appeal refusals to grant or renew permits or revocations,[8] referring them to a committee formed by order of the minister of culture and comprised of:

1. A deputy of the president of the State Council, chosen by the council (president)
2. A representative of the State Information Service, from at least the senior level
3. A representative from the Supreme Council for Culture (members)
4. A representative of the Academy of Arts, at the level of professor or higher
5. A representative of the board of the syndicate with which the art work under appeal is

affiliated

The law allows the committee to consult experts as it deems fit, but does not give them a vote. The appeal procedures[9] involve filing the appeal with the committee, explaining the decision to be appealed and the grounds for appeal, within one week of the petitioner having been informed of the decision under appeal. The appeal must be sent by registered letter and accompanied by supporting documentation and evidence, as well as a receipt indicating payment of the insurance fee, to be set by a decree from the minister of culture; the fee is returned if the committee approves all the petitioner's requests. The petitioner may attend committee meetings or send a lawyer in his stead, and submit written briefs to the committee. The committee can summon employees with the censorship body for questioning or task an expert to prepare a report at the petitioner's expense. In the latter case, the petitioner must deposit a sum set by the committee with the Arts Department for the expert's fees. The committee is not bound by the expert's report.

As is clear from these procedures, the appeals process is onerous for the petitioner, particularly financially. He must pay an insurance fee—not specified by the law, but determined by decree of the minister of culture—to have his appeal formally accepted. If the appeal is rejected on the merits, the insurance fee is not refunded. He must also pay costs associated with the expert, whose opinion is not binding on the committee. These are onerous fees for the petition, and the costs are not specified beforehand, but are assessed by the committee as remuneration for the expert.

The law sets several penalties for violating its provisions. Persons who violate Article 2 by filming, recording, showing, or broadcasting any work of art without a permit from the competent authority are subject to up to two years in prison or a fine of at least LE5,000 and no more than LE10,000, or both.

Making a change, addition or deletion to the licensed work, or using segments disqualified by the censorship authority in promotional material, makes artists liable to one year in prison or a fine of at least LE1,000 and no more than LE2,000, or both. If an artist is convicted of violating the law, his permit is revoked; the same penalties are levied if the artist does not comply with the following rules[10]:

1. Note the number and date of the permit on all advertisements for the licensed work.
2. Print the permit to screen films on an individual frame.
3. Print the number and date of the permit to show audio and audiovisual works on a visible place on the tape.
4. Print the number and date of the permit with the name of the audio work on the record itself or the tape reel.
5. Display the film frame with the permit immediately before the title of the film.

Article 17 stipulates that in the event that these provisions are violated, the public place used for the screening, broadcast, or performance shall be closed down for no less than one week and no more than one month, and all the equipment and machinery used in the course of the violation shall be confiscated. After the violation is established and the necessary police report filed, the filming, recording, screening, performance, broadcast, or sale may be suspended by administrative means and the subject of the violation confiscated.

As the penal provisions of Law 430/1955 make clear, the legislature chose to levy criminal sanctions, including liberty-depriving penalties, to deter any breach of the law, thus demonstrating the authority's hostility to freedom of artistic expression and its desire to restrict it. Works of art of all types—cinema, theater, television, music—are means of expression. Liberty-depriving penalties should not be levied as punishment for breaching regulations related only to prior licensing, not criminal acts, which does not constitute an action that violates the basic rights of others.

5.Published in the Official Gazette on Sep. 3, 1955.

6.Article 2 of the law states, "It is impermissible to undertake the following activities related to audio and audiovisual works without a permit from the Ministry of Culture: 1) filming, recording, copying, or adapting for use; 2) performing, screening, or broadcasting in a public place. The conditions and status of the public place shall be defined by decree of the prime minister; and 3) distributing, renting, circulating, selling, or displaying for sale."

7.Article 9 of the law states, "The censorship authority may revoke a permit granted with cause at any time if new circumstances dictate it. In this case, it may reissue the permit for the work without charge after the necessary deletion, addition, or modification is made."

8.Article 12.

9.Article 13.

10.Article 8.

CHAPTER TWO
Administering censorship of artistic expression

Law 430/1955, amended by Law 38/1992, apparently inadequately elaborated all the particulars of the censorship of artistic works, and so the prime minister issued Decree 162/1993 containing the implementing regulations for the censorship of audio and audiovisual works.[11] The regulations define the competencies of the General Directorate for the Censorship of Artistic Works for the censorship of content of audio and audiovisual works and the licensing of films and recordings, screenings, broadcast, performances, the sale or circulation of works, or the adaptation of them. It defines the procedures for applying for a permit, how the application is processed by the directorate, the content that cannot be licensed by the directorate, and appeal procedures in the event that an application is rejected.

The regime established by the implementing regulations contains numerous bureaucratic procedures that inhibit freedom of artistic expression, forcing artists to deal with complicated administrative procedures with the sole purpose of ensuring state control over the content of works of art. The regulations also prohibit the general directorate from granting permits to any works that contravene the vaguely formulated standards of spiritual, religious, and moral values and the public order.

A. Applying for a permit

Under the regulations issued with Prime Ministerial Decree 162/1993, a person seeking a permit for any work with artistic content, such as a film or a show, must submit an application

to the General Directorate for the Censorship of Artistic Works using the form prepared for this purpose. The artist must submit the following documentation with the application:

1. Documents proving the applicant's rights over the work in question.
2. Several copies of the work for which the permit is sought, as defined by the minister of culture depending on the type of art work.
3. A receipt for payment of the licensing fee.

The creator of the work is therefore required to pay a fee for the permit, although the law does not define the value or the way in which it is calculated. This creates the potential for onerous fees for a permit to film, show, or perform a work of art.

B. Consideration of permit applications

Under Article 7 of the implementing regulations, the General Directorate for the Censorship of Artistic Works should establish a general registry and an individual registry for each type of art work for the entry of permit applications. The applications are to be entered in the registry by sequential number based on the date and hour of receipt. A file is to be opened for each application, to include all documents, documentation, and copies of the work in question.

Within ten days of the registry of the application, the directorate must send a registered letter to the applicant detailing the changes to the work it requires.

This procedure marks the beginning of the directorate's interference with artistic content, whether audio or visual, cinema, theater, or music.

The directorate must examine the work and rule on the application within one month of submission or one month from the applicant's completion of the changes demanded by the directorate, depending on the circumstances.

This means that the artist must make the changes required by the general directorate in order to obtain the permit necessary to film, record, exhibit, or perform his work. For filmed and recorded works or adaptations, the regulations state that the permit application must be adjudicated within three months of the date that all licensing requirements are met.

If the application is denied, in whole or in part, the rejection must state cause and the applicant notified by registered letter.

C. Censorship of the content of works of art

According to the implementing regulations, when considering a permit application for any artistic work, censors must ensure that the work[12] does not infringe on any of society's religious, spiritual, or moral values, public morals, or the public order.

Article 8 of the regulations set up this extremely conservative framework. It makes a permit for an art work dependent on the content not violating a set of values, constituting a dangerous

restriction on artistic freedom. Indeed, this freedom cannot exist if the artistic imagination is subject to such constraints and artists are forced to subjugate their skills and points of view to overly broad, amorphous concepts like “public morals” and “the public order,” which are open to interpretation depending on the time and place, the views of the ruling authority, whether the authority is a democratic or authoritarian, the personal views of those examining the art work, and cultural consumers’ divergent opinions. As discussed below, the regulations define in some detail the topics that cannot be broached or transgressed if a permit is sought.

1. Advocacy of atheism and disparagement of the Abrahamic religions

This standard severely restricts artistic works that deal with religious issues, whether related to freedom of expression of belief, religious orientations not recognized by the state and society—such as agnosticism and the non-Abrahamic religions—religious history based on premises that differ from mainstream opinion, or even the criticism of religion, all an indivisible part of freedom of expression and the right to criticize.

There are numerous examples of religiously motivated censorship of artistic expression, among them case no. 8931/65 filed in 2011 with the Administrative Court by a group of lawyers naming the minister of information, the Egyptian Satellite Company, the Egyptian Company for Media Production City, the General Authority for Investment, the sheikh of al-Azhar, the mufti of the republic, and the director-general of the Islamic Research Academy. The petitioners sought an injunction and annulment of a decree permitting the broadcast of the Iranian series, “Youssef al-Siddiq” on all channels broadcast through NileSat.

The Association for Freedom of Thought and Expression (AFTE) intervened in the case and asked the court to reject the suit, arguing that creative freedom entails no restrictions on the variety of opinions. If some reject the depiction of prophets due to certain religious opinions and ask that such serials be banned, others believe that such strictness is a type of censorship of freedom of thought and creative freedom, both guaranteed in Article 49 of the constitution, particularly artistic creativity. The petitioners stated that the series depicted two prophets: Youssef, portrayed as an adult by Iranian actor Mustafa Zamani and as a child by Iranian actor Hussein Jaafari, and Yaaqoub, played by Iranian actor Mahmoud Pakniyat, as well as the Archangel Gabriel, played by Iranian actor Ardalan Shoja Kaveh. The petitioners argued that this was a flagrant transgression of Muslim sacraments, citing several religious opinions (fatwas) prohibiting the depiction of prophets and angels, among them a fatwa issued by the fatwa committee of al-Azhar in June 1968, an opinion of the Islamic Research Academy issued in February 1972, recommendations from the conference of the Islamic Research Academy in October 1977, the opinion of the board of the Islamic Research Academy issued in April 1978, and an opinion from the Fatwa Office in August 1980. All of these fatwas and opinions

prohibited the depiction or portrayal of prophets by any means. In July 2011, the Cairo Court of Expedited Matters issued an injunction against the screening of the series on Melody and other channels in Egypt.

2. The portrayal or depiction of vices or drug use in a way that encourages emulation

This curtailment of freedom of artistic expression does not recognize the role of the imagination in art and makes the state the custodian of “social values.” It assumes that denying permits to art works that address issues like drugs protects society’s value system, which is apparently threatened by artistic freedom in the view of the legislator. This inhibits artistic freedom and obstructs the creative process itself, fostering self-censorship among artists to avoid the censor’s scissors.

3. Provocative and indecent sexual scenes and obscene phrases and gestures

In general sex in Egypt is a taboo that freedom of artistic expression cannot transgress. The General Directorate for the Censorship of Artistic Works places heavy restrictions on scenes dealing with women’s bodies or sexual relations, ostensibly to protect public decency and morals, vague terms for which no legal definition is provided. This taboo also illustrates the conservative nature of the legislative authority in Egypt, which does not recognize any artistic need for such scenes and sees them solely as a threat to social values without considering the artistic context.[13]

4. The depiction of crime in a way that fosters sympathy, encourages emulation, or makes a hero of the criminal

This condition illustrates the Egyptian legislator’s stance on freedom of artistic expression, which is essentially a conservative stance that is hostile to creative freedom and apprehensive of artistic works, leading it to infringe on the right of the audience itself to choose and to experience artistic expression. This restriction also demonstrates the severity of prior censorship on artistic expression.[14]

These are not the only limits imposed on works of art set down by the implementing regulations, but merely a small sample of the broad restrictions to which artistic expression is subject. We will address these additional limits in the coming chapter, which looks at the standards that define the function of the censorship regime and grant it the power to intervene in artistic content and force the artist to revise his work to obtain a permit to film, record, or exhibit his work.

11.The regulations were published in issue no. 29 of the Official Gazette, Feb. 3, 1993.
12.Article 8.
13.Ibid.
14.Ibid.

CHAPTER THREE
Censorship standards for works of art

Minister of Culture Decree 220/1976 defines the detailed standards to be used in the censorship of art works. The General Directorate for the Censorship of Artistic Works must comply with these standards when examining works for which a permit is sought to film, record, exhibit, sell, or use. Article 1 of the decree defines the goal of censorship as the protection of:

1. Public morals
2. Public order
3. Children from deviance

These standards illustrate the custodianship the legislator wishes to impose on society, with itself acting as the protector of morals and the so-called public order and without clearly defining these standards. In so doing, the legislator has far exceeded the social function of legislation, which is to regulate relations between the individual and the state and between individuals with the goal of protecting rights and liberties, not limiting freedoms and depriving individuals of their right to choose or artists of their right to freedom of expression.

In practical terms, in order to achieve the objectives outlined in Article 1, the minister's decree established a set of red lines with which the general directorate must comply when evaluating permit applications. The directorate may not license the exhibition, production, or promotion of any work that includes any of the following:

1. Advocacy of atheism, the disparagement of the Abrahamic religions and religious beliefs, or the approval of sorcery.

2. Depictions of the image or voice of the prophet, whether symbolic or explicit, or images of one of the first four caliphs, the prophet's family, or the ten people promised paradise, or images of Jesus Christ or any of the prophets; in all cases, the competent religious bodies should be consulted.

3. The improper recitation of Quranic verses, prophetic hadith, and the content of revealed sacred text or the improper or inaccurate presentation of religious rites.

4. Depictions of funeral or burial ceremonies that do not comport with the solemnity of death.

These four standards all concern religion, the topic most subject to censorship in Egypt, both in the form of restrictions imposed by the general directorate and in the criminalization of the publication of content deemed blasphemous by the Penal Code, which levies liberty-depriving penalties on the publication of any content that is critical of religions or promotes religions not officially recognized by the state and society.[15]

One example of the censorship of art works that address religious issues is the change made by director Murad Mounir to the play *Hussein As a Martyr*, which incorporated part of the text of *Hussein As a Revolutionary*, by writer Abd al-Rahman al-Sharqawi. Mounir applied for a permit from the general directorate, but the director sent the text to al-Azhar, which rejected the stage depiction of Hussein, the prophet's grandson, for the third time. Mounir had hoped that al-Azhar would agree after the series "Youssef al-Siddiq," aired on the Egyptian Melody channel, depicted the person of the prophet Youssef, but al-Azhar continued to reject a portrayal of Hussein on the stage. Actor Nour al-Sherif had long wanted to play the role of Hussein in the production and was the first choice for the part, but al-Azhar quashed his dream.

5. Justifications of vice that inspire sympathy with the perpetrators or use it to serve some noble aim.

6. The depiction of vice in such as way as to encourage emulation, undue emphasis on the vice in the plot, or sufficing with the punishment received at the end by the offender if the general consequence of it is to incite to vice.

These two standards are extremely vague. The term "vice" has no legal definition, for it is primarily a moral and social term whose interpretation may differ from person to person and one era to the next. The application here leads to arbitrary restrictions on artists when it is used as a yardstick to evaluate artistic works.

7. Showing the naked human body in a way that contravenes social norms and traditions, allowing actors' clothing to expose details of the body that may embarrass viewers or which are inconsistent with social norms, and highlighting angles that put egregious stress on body parts.

8. Provocative sexual scenes or homosexual scenes and gestures or phrases suggestive

of them.

9. Scenes of undress, provocative dance scenes, or inappropriate or immodest movements by dancers and actors.

These three standards concern restrictions on sexual content, which, after religion, is the topic most subject to restrictions in art works, particularly when it comes to nudity, physical anatomy, or sexual scenes. This is true of scenes between a man and a woman, but restrictions increase in regard to socially unacceptable relationships, such as homosexual relations, which may not be broached by any form of artistic expression in Egypt. This inhibits artists from working freely and makes them more likely to self-censor to avoid government or social censorship.

10. Depictions of drunkenness, drinking, or drugs as something normal or laudable and depictions of gambling and games of chance that encourage viewers to see it as a source of livelihood.

11. The use of phrases, gestures, or meanings that are obscene, in poor taste, or vulgar, or failure to maintain good taste and judgment when using phrases intimately related to sexual life or illicit sexual relations.

12. Failure to maintain the sanctity of marriage and family values or the depiction of scenes that are inconsistent with filial respect, if the intent is not homiletic.

These standards are designed to protect public decency or public morals. As noted above, these are vague standards whose application violate the freedom of artistic expression and impose a conservative custodianship on the public and its right to choose.

13. Depictions of crime that inspire sympathy, induce emulation, make the criminal a hero, minimize the commission of the criminal act, or minimize its seriousness to society in a way that inspires emulation.

14. Depictions of crimes of vengeance or revenge in a way that justifies them.

15. Detailed brutal depictions of murder, assault, torture, or general cruelty, or the use of terror for the sake of terror or to frighten the public or in a way that may shock the viewer.

16. Depictions of suicide as a reasonable solution to human problems.

17. False or distorted depictions of historical facts, particularly those related to national figures.

18. Disparagement of a foreign state or people that enjoys friendly relations with the Arab Republic of Egypt and the Egyptian people, if it is not necessary to present a historical analysis required by the context of the topic.

19. The broaching of any topic that represents a human race or a particular people in a way that subjects them to contempt or mockery, unless it is necessary to create a positive impression for a specific end, such as to discourage racism.

20. The depiction of social problems in a way that promotes despair and despondency, provokes or creates ideas of class or sectarian divisions, or undermines national unity.

An example of attempted censorship related to history and the prohibition on the disparagement of national figures is the lawsuit filed by director Khaled Youssef and writer Mamdouh al-Leithi against the minister of culture, the minister of defense, and the censorship agency. The plaintiffs sought to overturn a decree from the General Directorate for the Censorship of Art Works delaying a permit to shoot *The President and the Field Marshall* pending the approval of General Intelligence and Military Intelligence. On November 24, 2009, the Administrative Court ruled on the case, noting in its judgment, “The censorship of liberties in general and particularly the freedom of opinion and the freedom of literary, artistic, and cultural expression is an exception to the rule in all constitutions. The legislator has defined the limits of this censorship, and it may not exceed these limits, expand the scope of censorship by creating new forms or introducing new bodies not specified by law to impose restrictions on the expression of freedom of opinion or creative opinion, or overburden freedom of expression with restrictions that have no basis in the law for the benefit of a certain group or class.” In ruling that General Intelligence and Military Intelligence had no jurisdiction over the matter, the court stated, “If the legislator grants competence to a particular administrative body, it must comply with the boundaries of this competence. This body may not be stripped of its competence or forego it, and no other administrative body without a basis in the law may dispute this competence or arrogate to itself a competency that is not inscribed in law. Otherwise, the censorship of freedom of expression becomes the confiscation of freedom of expression.” For these and other reasons, the court annulled the censor’s decree delaying the permit for the film pending approval by intelligence agencies, reasoning that the sole body with jurisdiction under the censorship law (Law 430/1955) was the censorship authority. In turn, no other body, including intelligence bodies, had the right to censor works of art.

Also in 2009, Khaled Youssef’s film *Shehata’s Shop* encountered problems with the censor, which delayed a screening permit for the film. The censorship authority referred the matter to the Interior Ministry and asked Youssef to delete some scenes, which he strongly rejected. Ali Abu Shadi, the head of the general directorate at the time, told AFTE researchers in an interview on June 22, 2009, “There are two sovereign bodies that intervened on this film. When the script was reviewed, there were several reservations, particularly as concerns public morals. In our view, we also found that the final scene was superfluous. It advocates chaos. It is very similar to the last scene in *It’s Chaos*, but even more, as in the end the armed forces take to the streets, as if the regime is being overthrown. We found that the scene was superfluous and unnecessary. It is also against the censorship law insofar as it is against the public order.” Abu Shadi added, “My main problem with the film is that there were agreements that were not implemented. When

they asked for a filming permit from the Interior Ministry, the ministry objected to the final scene and asked to see the film when it was completed. As such, there was a moral obligation. We were surprised when we saw the film to see tanks in the scene. At this point, another sovereign body asked to see the film, too. After that the sovereign bodies informed me that they approved and that the scenes were none of their business. I then immediately gave my approval and the problem was finished."

The principal issue here is the interference of security bodies that arrogate to themselves the right to grant or deny permits for works of art, ostensibly to protect the public order and supreme state interests, although the law does not grant them any right or competence to censor artistic works, which is the sole province of the Ministry of Culture's general directorate. This illustrates another fundamental problem with censorship: namely, that the censorship authority is not independent, but is rather part of the executive authority and subservient to its policies.

Article 3 of Minister of Culture Decree 220/1976 states that censors may not grant permits that allow minors under the age of 16 to see a work that contains excessive violence, crime, or sex that might influence their psychology, giving rise to doubts or fears, inducing emulation, shaking their faith in social values, or disseminating a spirit of despair and pessimism. The article also prohibits permits that allow children under the age of 12 to view violent or sexual films or films containing scenes of violence and sex.

When granting permits for any work of art, the minister of culture decree furthermore prohibits any sexually provocative or indecent titles, or titles or promotional material containing obscene or vulgar terms.

Censorship of works produced by ERTU

Minister of Culture Decree 222/1976 on guidelines for the censorship of works of art also regulates censorship for works produced by the Egyptian Radio and Television Union (ERTU).[16]

The decree considers the standards explicated therein to be the baseline for the ERTU, meaning that the censorship of works produced by the agency is even stricter than that of privately produced works. The decree states that competent bodies in the ERTU must comply with the minimum guidelines laid out in its articles when licensing any work for television or broadcast and when showing any promotion for these works. These bodies must pay special attention in choosing what to broadcast in order to empower social and higher artistic values and avoid vulgarity, always considering that their programs reach individuals of all ages, which brings with it a special responsibility (namely, to protect children).

This report's researchers documented many cases of censorship involving works produced by ERTU, among them the ones discussed below.

General Ahmed Anis, the head of the radio and television sector, issued a decree removing scenes involving the smoking of water pipes, cigarettes, and drugs from Ramadan soap operas, a decree approved by Information Minister Anas al-Fiqqi. Pursuant to the decree, seven scenes were cut from the series *al-Batniya*, written by Mustafa Muharram and directed by Mohammed al-Nuqli, most of them scenes of young people taking drugs and smoking water pipes. Another scene was cut of actress Ghada Abd al-Razeq smoking a water pipe with the camera focused on her face as she exhaled.

Five scenes were cut from *Satan's Joys* that showed actor Gamal Suleiman furiously smoking a water pipe.

One scene was dropped from *Flotsam and Jetsam* in which actress Samiya al-Khashab appeared in a nightclub with a water pipe in front of her. The censors removed a scene from *Glad Tidings* that showed actress Mervat Amin, in her role as a school principal, catching a group of students smoking marijuana.

In addition to smoking, other objections were raised about scenes showing violence, which censors believed were not commensurate with "human traditions." With the serial *Heaven and Hell* in particular, censors asked that scenes of prison violence and torture be moderated.[17]

Moving to censorship of scenes involving a discussion of Muslim-Christian relations, the censor cut a scene from the series *Merchant of Happiness*, written by Atef Bishay. The scene showed a Muslim riding in a taxi with another passenger. The driver puts on a tape of Sheikh Mohammed Rifaat and the Muslim passenger begins explaining how the sheikh's voice is pure gold. But the other passenger is, a Copt, asks them to turn down the volume, provoking a fight; he then plays Coptic hymnals on his mobile phone.[18]

The team behind *Very Special* was shocked when the 13th episode of the series aired on Egyptian televisions and they found that part of actor Mahmoud al-Lozi's dialogue had been cut; the offending sentence was, "His family objected from the beginning to his marriage to Magda, a Christian woman." The scene was cut on Egyptian television only, airing normally on all other channels.[19]

An entire scene was cut from the third episode of *The Second Gate*. Scene 22 showed a university professor stealing exams from the central exam distribution center, showing the details of the crime. The censor considered this scene to be prohibited not only in Egypt but internationally, because it teaches people how to commit the crime. After censoring the scene, he wrote in his report that it contravenes international norms for screen ethics.

The makers of *Blood and Women* found that censor objected to the seven-part series because it dealt with the case of Hisham Talaat Mustafa and Suzanne Tamim. The author, Mohammed al-Gheiti, said that it was the central censorship authority that objected to the work.[20]

15.For example, Articles 98, 160, and 161 of the Penal Code (Law 58/1937).
16.Article 5.
17.Al-Yawm al-Sabia, Aug. 11, 2009.
18.Nahdat Misr, Sep. 9, 2009.
19.Al-Dustour, Sep. 6, 2009.
20.Nahdat Misr, Aug. 2, 2009.

CHAPTER FOUR
Criminalizing creative freedom

There is a clear link between, on one hand, the restrictions prescribed by Law 430/1955 on the censorship of artistic works, Cabinet Decree 162/1993 containing the executive regulations for the law, and Minister of Culture Decree 222/1976 on censorship standards and, on the other hand, the restrictions imposed by the Egyptian Penal Code (Law 58/1937) on freedom of artistic expression. All refer to the protection of public morals, religions, and the reputations of persons and institutions. This is reflected in censorship cases heard before Egyptian courts, most of which revolve around just these restrictions. Indeed, most lawsuits involving the censorship of art are predicted on one of the three main taboos: religion, sex, and politics.

A. Religion and criminalizing freedom of artistic expression

The Penal Code contains several provisions that restrict freedom of expression of belief, which has direct consequences for freedom of artistic expression, particularly for works that discuss religious issues. The Penal Code levies liberty-depriving penalties for any expression containing an inappropriate treatment of the Abrahamic religions. For example, it prescribes a sentence of at least six months and no more than five years imprisonment or a fine of at least LE500 and no more than LE1,000 for any person who exploits religion to promote, orally, in writing, or by any other means, extremist ideas with the intent to provoke civil strife, show contempt for or disparage an Abrahamic religion or a confession thereof, or harm national unity.[21]

A jail term or a fine of at least LE100 and no more than LE500, or both, is the sentence for any

infringement of a religion that performs its rites publicly by any of the means outlined in Article 171. The following are covered by the provisions of this article:

1. The printing or publication of a book held sacred by the adherents of a religion that performs its rites publicly, if a passage of the book is deliberately distorted to change its meaning.

2. The imitation of a religious festival in a public place or meeting with the intent of mocking it or to allow an audience to watch it.[22]

An infamous case that used these provisions for protecting religion against free artistic expression was the misdemeanor case filed by an attorney against actor Adel Imam (case no. 4234/2012/ Pyramids summary misdemeanor court). The plaintiff alleged that Imam had defamed Islam and Muslims in some of his works, including in the films *Terrorism and Kebab*, *The Terrorist*, *Birds of Darkness*, and *Hassan and Morqos*, as well as the play *The Leader*. The plaintiff based his case on Article 98 (f) of the Penal Code.

The plaintiff asked that the respondent be given the sentence mandated by Article 98 (f) of the Penal Code because he had infringed on Islam and Muslims, exploiting religion in his works to promote extremist ideas with the intent to provoke civil strife and show contempt for and disparage Islam in general and Islamist groups in particular, which harms national unity.

Adel Imam was sentenced in absentia to three months in prison and fined LE1,000 by the first-instance court. The same court upheld the judgment on appeal on April 24, 2012. The latter judgment was also appealed and slated for a hearing on July 3, 2012 though it was postponed to September 12, 2012. The appellate court ultimately rejected the civil and criminal suit, acquitted Imam of all charges against him, and ordered the plaintiff to pay all costs.

B. Politics and criminalizing freedom of artistic expression

Political topics that criticize a domestic or foreign policy or a state employee or his powers are a red line for artistic expression. The Egyptian Penal Code carries liberty-depriving penalties and mandates fines for several actions that fall within the scope of artistic expression. For example, under the Penal Code any person who incites one or more persons to commit a felony or misdemeanor using public words, utterances, or gestures, or writing, drawing, images, photographs, symbols, or any means to make it public or by any other public means shall be considered a partner in the act and given the same penalty, if this incitement led to the actual commission of the felony or misdemeanor. Words or utterances are considered public if they are declared in public or repeated through mechanical means in a public forum, public road, or any other populated site, or if they are declared in public or repeated such that a person on such a road or in a place can hear them, or if they are broadcast through wireless means or by any other means.

An action or gesture is public if it takes place in a public forum or public street or any other

populated place, or if it takes place such that a person in such a street or place can see it.

Writing, illustrations, images, photographs, symbols, and other means of representation are considered public if they are indiscriminately distributed to several people, if they are exhibited where a person in a public street or peopled place can see them, or if they are sold or displayed for sale at any place.[23]

The Penal Code also prescribes a jail term of no more than five years and a fine of at least LE 5,000 and no more than LE10,000 for any person who commits the following in any of the foregoing ways:

1. Incites to the overthrow of the Egyptian government.
2. Promotes schools of thought that seek to change basic principles of the constitution or the basic social order by force or terrorism.[24]

A fine of at least LE 10,000 and no more than LE 30,000 is the penalty for any person who publishes, manufactures, or possesses with intent to sell, distribute, rent, post, or exhibit inaccurate images likely to harm the country's reputation.

The same penalty applies to any person who deliberately imports, exports, or transports, by himself or through another, anything with the foregoing purpose, as well as any person who advertises or brings it to the public, sells or rents it, or displays for sell or rent, even if not publicly, and any person who presents it publicly, directly or indirectly, or even at no charge, in any form, and any person who distributes it or receives it for distribution by any means.[25]

The crime of insulting the president is also a general restriction on free expression. Article 179 of the Penal Code levies a fine of at least LE 10,000 and no more than LE30,000 for any person who insults the president in any of the aforementioned ways.

Article 184 criminalizes insulting institutions, prescribing a jail term or a fine of at least LE5,000 and no more than LE10,000, or both, for any person who insults or libels in any of the aforementioned ways the People's Assembly, the Shura Council, or any other regularly constituted body, or the army, courts, or public authorities or agencies.

One instance of censorship due to opinions critical of a state institution was seen in 2010, when the censor asked the author of the series *The Mayor's Wedding* to make some changes to highlight the role of security. Sayyed Khattab, the head of the censorship office at the time, told the press, "The series portrays the police as incapable of obtaining information, which defies logic."[26] He clarified that it harmed the script and the viewer might not believe it. Khattab said that the author responded to the censor's request and pledged to make changes without objection. At the same time, the newspaper story quoted the producer as saying he had no problem at all with the censor's demands, "stating that when they went to receive the censor's final report, one of the censors asked to meet the author of the work. When he went the following day, he asked him to make some changes to highlight the role of security in the events. He said that the

author agreed to add several scenes to enrich this dramatic thread of the series."

This situation remains unchanged. That year, 2010, the censor continued to send art works to bodies with no authority to issue an opinion or approval for permits. This conduct demonstrates the failure of the head of the censor's office to shoulder his responsibilities under the law, in fear of bearing liability for the possible consequences of a work of art.

Provisions of the Penal Code that impose censorship of religious or political content contravene international human rights law, especially in the field of expression, which includes incitement to violence, discrimination, or hatred. International jurisprudence stresses the need to conform to several standards when addressing cases of incitement, among them the person responsible for the expression, his intention, the general context, the extent of its dissemination, and the likelihood of material consequences to the incitement, particularly if the medium of expression is an artistic, scientific, or academic work.[27] Moreover, it is necessary to distinguish incitement to violence from incitement to discrimination or hatred for the purposes of punishment. International standards dictate that the state should use numerous methods to counter hate speech, though education and awareness raising, as well as administrative or civil penalties, rather than limiting its response to criminal sanctions.

C. Public morals and criminalizing freedom of artistic expression

The legislator does not define public decency, but the Penal Code prohibits the circulation of any content liable to violate public decency, setting a penalty of no more than two years imprisonment or a fine of at least LE5,000 and no more than LE10,000, or both, for any person who publishes, produces, or possesses with intent to traffic in, distribute, rent, post, or display printed or written material, illustrations, advertisements, engraved images, hand-drawn or photographic images, symbolic gestures, or any other thing impinging on public decency.

Public decency encompasses all sexual materials that show the body or address socially unacceptable sexual relationships, such as homosexual relations, or even traditional sexual relationships in a way that goes against prevailing morals.

One relevant example is a case filed by a citizen petitioning the court to compel the state to censor a work of art. The citizen filed the case (no. 39399/66JY) with the Administrative Court against the information minister as preparations were underway to screen a series in Ramadan about renowned actress and dancer Tahiya Carioca, to be played by actress Wafaa Amer. The plaintiff alleged that Carioca had been charged in an indecency case and as such asked for an injunction against the minister's passive decision to not cancel the production of the series. The plaintiff further asked that those responsible be referred to disciplinary and criminal court and face any subsequent consequences.

The case was heard in court on May 26, 2013, with the AFTE intervening on behalf of the

minister of information. The case was postponed to September 3, 2012 for the amendment of motions at the plaintiff's request. The case was referred to the State Commissioners Agency for the preparation of a legal report, which had still not been issued at time of writing.

21.Article 98.
22.Article 161.
23.Article 171.
24.Article 174.
25.Article 178 (bis) (2).
26.Al-Shorouk, Feb. 15, 2010.
27.Rabat Plan of Action on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence, <http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf>.

CHAPTER FIVE

The professional arts syndicates as instruments for censorship

Several professional syndicates regulate the professional arts, among them the Acting Professions Syndicate, which includes all actors in cinema, theater, television, and radio, as well as theater direction, theater management, makeup, prompters, theater set and costume design, the popular arts and ballet, puppeteers and others identified in the syndicate's bylaws.

The Film Professions Syndicate includes all professionals working in direction, screenwriting, cinematography, production management, editing, sets, makeup, sound, and crew work in both film and television.

The Musical Professions Syndicate covers all those working in singing of various types, playing instruments of all types, musical composition, musical orchestration and arrangement, conducting, and music history.[28]

Theater, film, and music critics may join the relevant syndicates, as may authors of theatrical, cinematic, and musical texts.[29]

Law 35/1978 regulates the affairs of these syndicates. Article 3 states that the goal of their establishment is:

1. To advance the theatrical, cinematic, and musical arts.
2. To preserve and develop the human and national heritage of these arts, particularly the Egyptian and Arab heritage, in accordance with the exigencies of global progress, combining authenticity with contemporaneity.

One of the ways the artistic syndicates enforces censorship of art works is by prohibiting any

person who is not a member from working in the theater, cinema, or music.

A syndicate board may grant a temporary permit for a specific work or for a defined period of time for non-members in order to facilitate the emergence of promising talents or the continuation of distinguished experienced artists, in consideration of joint productions or to promote cultural exchange between Egypt and other countries, or due to rarity and the lack of a practitioners among syndicate members. The permit does not give the applicant any of the rights or privileges reserved for working members of the syndicate, such as the right to participate in the general assembly or the health and insurance benefits offered to members

The syndicate will monitor the implementation of the contract to ensure that the permit applicant's rights are upheld during the period of the contract. In exchange, the applicant pays a fee to the syndicate—assessed based on the type of work, but no more than LE 10,000, or LE 20,000 if the applicant is not Egyptian. The bylaws of each syndicate set these fees. It is prohibited to sign a contract with or employ a person who is neither a syndicate member nor the holder of a temporary permit.

This restriction severely limits the freedom of artistic expression in cinema, theater, television, and music. If the artist is not a member of a professional syndicate and does not hold a permit from one, producing, participating in, or disseminating the art work is tantamount to a crime, punishable by law. Law 35/1978 punishes offenders with at least one month and no more than three months in prison or a fine of at least LE2,000 and no more than LE20,000, or both.[30]

The syndicate law contravenes international standards on freedom of association due to the conditions it places on union membership. Article 11 of the International Labor Organization's Convention 87 on freedom of association and protection of the right to organize states, "Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize."[31]An example of these restrictions in action was seen when actor Nasser Abd al-Hafiz was fined LE 10,000 for acting without a permit from the competent syndicate. The misdemeanor 23759/2009, filed by the Acting Professions Syndicate against young actor. Explaining its reasoning, the court stated in its judgment, "As to the substance of the case, it is established by Article 5/1 of Law 35/1978 that no person may work in the theatrical, cinematic, or musical arts in the way specified by the law if he is not a working member of the syndicate. Article 5 (bis) of the same law states that a penalty of at least one month and no more than three months imprisonment or a fine of at least LE2,000 and no more than LE20,000, or both, shall be assessed against any person who practices one of the professions named in Article 2 if he is not a registered member of the syndicate, or if he is prohibited from practicing the profession as long as he does not possess a permit in accordance with Article 5 of this law."

28.Conditions for membership in any of the artistic syndicates include: 1) holds Egyptian nationality or is a foreigner with at least a five-year residency, on condition of reciprocity; 2) enjoys full civil rights; 3) has a record of good conduct; 4) has not been convicted of a felony or a crime involving a breach of honor or trust, unless he has been exonerated; 5) must be a graduate of the specialized Egyptian or accredited foreign art college or academy, or have reached a level of culture as defined by the accreditation committee in accordance with the syndicates' bylaws; and 6) must be working in theater, cinema, or music in accordance with the provisions of Article 2 of the law.

29.Membership in all three syndicates is of three types: working, affiliated, and honorary. Working members are all those who participated in founding the synidcate or applied for membership and were accepted by the board; working members have the right to attend meetings of the general assembly and run for seats on the board. Affiliated members are those who are interested in the syndicate activities; they do not meet the conditions for working membership, but wish to take part in the syndicate in accordance with standards defined by the syndicates' bylaws. Affiliates cannot attend general assembly meetings or run for seats on the board. Honorary members are those who have performed high services for the syndciate, whether material or moral, Egyptian or foreigner, on condition of reciprocity for the latter. Honorary membership is granted by the syndicate board and confers no right to attend general assembly meetings or run for board seats.

30.Article 5 (bis).

31.Convention 87 approved by the ILO on Jul. 9, 1948 in its 31st session; pursuant to Article 15, it entered into force on Jul. 4, 1950.

CHAPTER SIX

The constitutional debate over the protection of creative freedom

Given the constitutional vacuum in Egypt since the January 25 revolution and given the numerous attempts to fill this vacuum, either with temporary constitutional declarations or a permanent constitution, freedom of artistic expression is one of the most contentious freedoms in society, provoking debate about its status in the constitution, the protections it deserves, and the restrictions that some believe are necessary.

In this context, it is important to formulate a future vision of constitutional protections for freedom of artistic expression or creative freedom by comparing the 1971 constitution—in effect prior to January 25, 2011—with the 2012 constitution drafted and adopted during the tenure of Mohammed Morsi, the Muslim Brotherhood-affiliated president who was forced to step down on July 3, 2013, as well as the draft text put together by the fifty-member committee tasked with amending the 2012 constitution.

Freedom of artistic expression and the 1971 constitution

The 1971 constitution does not make creative freedom subject to statutory regulation. That is, the legislator may not restrict it by law in any way not stated in the constitution, unlike other freedoms that the constitution states must be exercised within the limits of the law or in accordance with the limits established by law. On creative freedom, the 1971 constitution states in Article 49, "The state guarantees for citizens the freedom of academic research and freedom of literary, artistic, and cultural creativity, and it shall provide the means of encouragement

necessary to achieve this."

As is clear from the article, the constitution did not only uphold creative freedom, but made it obligatory for the state to facilitate and provide the means to foster it. Nevertheless, in the years in which the constitution was in force, this proviso was not reflected in laws restricting artistic freedom, which remained unchanged.

At the same time, Article 12 of the 1971 constitution, in the chapter on social and moral elements, states, "Society is obligated to preserve and protect morals and empower authentic Egyptian traditions. It must preserve a high level of religious instruction, moral and national values, the historical heritage of the people, scientific truths, and public morals, and this within the limits of the law. The state is obligated to follow and empower these principles."

This article establishes the general framework for the position of state and society on anything that infringes on recognized customs, traditions, and religious and moral values. Indeed, it acts as the basic framework when the legislator drafts laws, and thus we find phrases such as "public morals and ethics" dropped liberally in legislation related to freedom of expression, including artistic expression. This framework justifies the conservative legislative structure that restricted creative freedom in this period.

Freedom of artistic expression and the 2012 constitution

The 2012 constitution, which was drafted and approved in a referendum after the Muslim Brotherhood candidate won the presidency, severely restricts free artistic expression, setting up several prohibitions that differ little from the traditional restrictions related to religion and public morals and ethics. Indeed, the 2012 document makes these limits explicit, giving al-Azhar oversight authority on works related to Islam. Article 4 of the constitution states, "al-Azhar is an independent, Islamic institution of higher learning. It has sole jurisdiction over all its own affairs. It shall undertake to spread the call to Islam, the religious sciences, and the Arabic language in Egypt and the world. The opinion of the Azhar Body of Senior Scholars shall be sought in matters related to Islamic law."

This article gives the authority to assess any content related to Islam to al-Azhar senior scholars, a body with a very conservative history on creative freedom in general.[32]

Also in the 2012 constitution, the state sets itself up as the protector of values, morals, customs, and traditions against what it believes constitutes a threat to these values. Article 10 states, "The family is the foundation of society, its main pillars being religion, morals, and patriotism. The state and society shall strive to comply with the authentic nature of the Egyptian family, its cohesion and stability, and to entrench and protect its moral values, as regulated by law."

Article 11 states, "The state shall foster ethics, morals, the public order, a high level of instruction,

religious and national values, scientific truths, Arab culture, and the historical and civilizational heritage of the people, as regulated by law."

Commenting on these articles prior to the referendum, the AFTE noted, "Articles 10 and 11 of the draft constitution outline the basic parameters of public culture, seen by the framers of this draft as necessarily the primary determinant of what is socially acceptable and unacceptable. In turn, they see these as the boundaries for the exercise of rights and liberties laid out in chapter two, which should not contravene the general framework posited by the drafters in these three articles."

Article 10 makes the family the basis of society—the principal unit on which society is founded—noting that its basic pillars are religion, morals, and patriotism. This provision is at odds with the function of the law, which is addressed either to the individual or the state, but recognizes no such unit as the family. Rather, it respects what is called in legal philosophy "the individuality of the human person." In fact, this is the basis for the individual freedom that constitutions are written to guarantee and protect from the state. As such, the basis of society in the constitution must be the individual, who will inevitably differ with other individuals, whether within the single family or society as a whole, on ideas, opinions, orientations, needs, and predilections of all types.

The article also makes religion, morals, and patriotism the pillars of the family, disregarding other cultural components and their extremely diverse sources while specifying standards understood by people in manifold ways. Individuals do not share the same, sole understanding of religion, morals, and patriotism, but differ depending on their class, social, and cultural background. This raises a pressing question: which of the many understandings of religion, morals, and patriotism will be taken as the yardstick? The strictest understanding, the moderate understanding, or the one that utterly rejects this type of generalization?

The same article stipulates that the state shall protect family traditions and its moral values, which raises calls into question the function of a constitution. Is it designed to protect citizens' rights and liberties, or protect certain aspects of society's superstructure in an authoritarian way that imposes a specific interpretation of these aspects?

The same can be said of Article 11, which states, "The state shall foster ethics, morals, the public order, a high level of instruction, religious and national values, scientific truths, Arab culture, and the historical and civilizational heritage of the people, as regulated by law." This article in particular betrays a misunderstanding of how society develops. The language of the article assumes that ethics, public morals, traditions, customs, institutions, values, culture, and heritage determine society's evolution and guarantee the rights and liberties of its individuals. In contrast, an accurate legal understanding assumes that the constitution, laws, and regulations, whether establishing or supplementary, are part of this superstructure, which

is established by the level of rights and liberties actually enjoyed by individuals. In turn, ethics, values, heritage, and culture are a reflection of the application of these rights and liberties and the state's guarantee of them. Moreover, the state's respect for and protection of citizens' rights and liberties are what defines which values become the norm and are respected by society, not the opposite.[33]

True, the 2012 constitution upholds creative freedom of all types and guarantees freedom of expression in Article 45, which states, "Freedom of thought and opinion are guaranteed. Every person has the right to express his opinion orally, in writing, in images, or in any other means of publication and expression." Article 46, too, states, "Creative freedom of all types is the right of each citizen. The state shall advance the sciences, arts, and humanities and foster creative artists and inventors. The state shall take and protect all measures necessary to preserve the national cultural heritage and work to disseminate cultural services."

Nevertheless, Article 81 of the same constitution makes the exercise of all rights and liberties conditional on their not contravening articles in the chapter on state and society, which includes Articles 10 and 11 discussed above. Paragraph 3 of Article 81 states, "These rights and liberties shall be exercised insofar as they do not contravene the principles found in the chapter on state and society of this constitution."

Freedom of artistic expression in light of amendments to the 2012 constitution[34]

The changes introduced by the committee tasked with amending the 2012 constitution did not heed recommendations on freedom of expression in general or the demands to prohibit censorship of artistic expression. The article on artistic expression in the amended constitution states, "Literary and artistic creative freedom are guaranteed. The state is obligated to advance the arts and humanities, foster artists, protect their creations, and provide the necessary means of encouragement. No lawsuit may be brought to suspend or confiscate artistic, literary, or intellectual works or against any of their creators except through the Public Prosecution. No liberty-depriving penalty shall be levied for crimes committed pursuant to the publication of an artistic, literary, or intellectual product other than crimes related to incitement to violence, discrimination between citizens, or character defamation."

As is clear from this passage, the article does not abolish prior censorship of artistic expression. In fact, it maintains censorship of artistic works by:

1. Giving the Public Prosecution the authority to file suits seeking the suspension or confiscation of artistic, literary, or intellectual works.
2. Preserving liberty-depriving penalties for artists responsible for works that incite to violence or discrimination or impugn an individual's reputation.

The provision for liberty-depriving penalties go beyond even the limitations to freedom of

expression allowed by international norms, which distinguish between incitement to violence, incitement to hatred, and incitement to racial discrimination and require addressing issues of incitement in accordance with the context of the expression, while showing due regard for the circumstances of the expression, the person responsible for it, his intention, and the history of hostility between the relevant parties of the content. These safeguards are designed to prevent any subjective restriction of freedom of artistic expression not permitted by international law.[35]

In general, genuine constitutional guarantees for freedom of artistic expression require the framers of the constitution to explicitly prohibit all forms of unnecessary administrative oversight or censorship that enables the state to control artistic creativity and interfere with the content of works of art.

A constitutional restriction must also be placed on the legislator, particularly regarding criminal laws, enshrining the need to apply international standards for the exceptions to freedom of artistic expression to prevent the establishment of any arbitrary restrictions.

The constitution framers should also heed criticisms leveled at the 1971 and 2012 constitutions, particularly in regards to the social and moral core components. The state cannot set itself up as the custodian of values that inhibit free artistic expression, such as public morals, public decency, and customs and traditions. Not only is it impossible to legally define such terms, applying these standards pursuant to the constitution impedes changes to statutes that limit freedom of artistic expression and imposes an unjustifiable custodianship over the public's right to choose the artistic content it consumes.

The drafters of the constitution must also consider criticisms of the 2012 constitution made by the UN High Commissioner for Human Rights. In an official statement, the agency stated that it had observed that the text "does not explicitly prohibit discrimination on the basis of gender, race, religion, and origin, while preserving the same formulation as the 1971 constitution making the principles of Islamic law the primary source of legislation."

The UN High Commissioner noted, "The draft constitution guarantees freedom of belief, but it mentions only the three Abrahamic religions, raising fears of all other religious groups, including resident minorities such as Bahá'is. This makes this text less comprehensive than the 1971 constitution and opens the door to violations of Egypt's obligations under international law that aim to guarantee the right of all to freedom of thought, belief, and religion."

The Commissioner added, "Although freedom of the press is guaranteed to a certain extent, the constitution restricts it by guaranteeing respect for private life and national security. Censorship of the press is prohibited except in war time or military mobilization. The role of the National Media Council in regulating the profession is highly controversial."[36]

An example of a suit brought by the Public Prosecution related to respect for religions, in which the two official religious establishments in Egypt (al-Azhar and the Coptic Church) gave an opinion,

is the case of novelist Karam Saber (no. 8729/2013/Beba misdemeanor/Beni Soueif). The case began on April 12, 2011 when several citizens in Beni Soueif filed a complaint (no. 600/2011) with the public solicitor for the Beni Soueif prosecution, accusing Karam Saber of publishing a short-story collection, titled *Where Is God*, that contained 11 stories that advocate atheism, defame the divinity, and incite to civil strife and bloodshed. The prosecution investigated and sent a copy of the work to the Beni Soueif bishopric and al-Azhar to solicit an opinion as to whether the accusations leveled against the book were accurate.

The Beni Soueif bishopric said that the work contravened divine laws, mocked sacraments, and invented stories far removed from lofty, refined literature. For its part, al-Azhar held a similar opinion, saying that the work undermined the intellectual values of Egyptian society and rent at the fabric of Egypt. Both institutions demanded that the book be taken out of circulation because it would have a negative impact on society. Because of the controversy, al-Ahram and al-Akhbar refused to distribute the book to their vendors, forcing the author to distribute it himself through individual bookstores. The court sentenced Saber to five years in prison in absentia; the judgment was still under appeal at the time of writing.

32.Hanan al-Nadi, “Qadiyat al-fann bayn al-rafd wa al-qubul fi kull al-azman wa al-‘usur,” al-Ahram, <http://www.ahram.org.eg/NewsPrint/205627.aspx>.
33.AFTE comment on the 2012 constitution, <http://afteegypt.org/law_unit/2012/10/21/725-afteegypt.html>.
34.The Supreme Constitutional Court in case no. 2/15JY, Jan. 4, 1997, defined creativity, whether academic, literary, artistic, or cultural, as “a free, conscious stance that extends to various types of arts and sciences with divergent means of expression. It is not wholesale copying from others or the repetition of opinions and ideas circulated among people without arrangement, classification, or connection and analysis. It must be far removed from imitation and mimicry and give rise to an intellectual work with an innovative aspect, though it need not be pure novelty. It must take material form, whether as an illustration, sound, image, or moving work. It should not be limited to the sole possession of the creator but spread to others to influence them. As such, creativity in the life of nations is a source of enrichment, not a luxury, deepening their mission to change modes of life through it. Indeed, it is an instrument for their advancement.”
35.Article 19, “Prohibiting Incitement to Discrimination, Hostility or Violence,” policy brief, <http://www.article19.org/resources.php/resource/3572/en/prohibiting-incitement-to-discrimination,-hostility-or-violence>.
36.OHCHR, Dec. 7, 2012,
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12870&LangID=A>.

CHAPTER SEVEN

International standards for freedom of artistic expression

The Egyptian state, as a member of the international community and several international and regional organizations, has the obligation to amend national legislation to bring it into line with freedoms upheld in conventions and treaties it has ratified. It must also implement recommendations issued by these organizations. A comparison of Egypt's international obligations and international standards for freedom of artistic expression with the reality of relevant national legislation reveals flagrant violations by the Egyptian government of its commitments on both the level of legislation and practice, as discussed below.

ICCPR and freedom of expression

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) upholds freedom of expression for all persons by all means, stressing that artistic forms are among the means of expression protected under the article. Paragraph 3 of the article establishes restrictions on freedom of expression, but makes them dependent on the principle of necessity, meaning that freedom of expression may not be unnecessarily limited.[37]

Looking at the practices of the Egyptian authorities, it is clear that they impose unnecessary limits on artistic freedom, ostensibly to protect the public order, public morals, supreme state interests, or religions. This includes Minister of Culture Decree 222/1976 on standards for the censorship of artistic works, which prohibits showing the nude human body in a way that contravenes social norms and traditions, bans clothing worn by actors that exposes physical

details that might embarrass the viewer or contravene social norms, and prohibits angles that unduly emphasize some physical features. The same decree also prohibits explicit or symbolic depictions, as well as the voices, of the prophet, the first four caliphs, the prophet's family, and the ten people promised paradise. Similarly it bans depictions of Jesus Christ or the prophets in general, and it requires the censorship authorities to consult the competent religious bodies on such matters.

While Article 20 of the ICCPR[38] prohibits incitement to violence, hostility, or racial discrimination,[39] the context must be considered in applying these restrictions. The criteria for incitement to violence, racial discrimination, or hatred cannot be applied arbitrarily or with the objective of censoring works of art that do not meet the definition of hate speech or incitement.

In general, when evaluating artistic expression, the priority should be given to artistic criteria, as some forms of expression by nature require the use of a certain form in addressing the public. As such, when applying standards for incitement to any content, strict care must be taken to avoid the imposition of any arbitrary, subjective limits. These forms of expression include:

1. Artistic expression[40]
2. Religious expression
3. Academic and scientific research
4. Discussions related to the public interest (electoral campaigns, political debates)
5. Facts and value judgments.

In general, freedom of expression and its permissible limitations remain disputed when interpreting the relevant international legal texts, particularly when the exercise of freedom of expression conflicts with the exercise of other rights and liberties. A key text in clarifying the standards for limits on free expression is the policy brief issued by Article 19, an organization that defends and promotes freedom of expression, titled "Prohibiting Incitement to Discrimination, Hostility or Violence." The brief looks at how to apply these restrictions and the legal remedy for each form of incitement, as well as providing definitions of basic concepts such as incitement and hate speech.[41]

A relevant text for preventing arbitrary interpretations of limits on the exercise of human rights in general is Article 5 of the ICCPR, which states:

> 1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
>
> 2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not

> recognize such rights or that it recognizes them to a lesser extent.

As a party to the covenant, the Egyptian government is obligated not to limit rights that are broader than those explicitly stated, but in fact when it comes to freedom of artistic expression the government exceeds the restrictions permitted by international law and interprets them quite liberally. For example, the graphic novel *Metro*, by artist Magdi al-Shafi, was confiscated because it contained the image of a naked girl and some utterances considered indecent under Article 178 of the Egyptian Penal Code. It also criticized the Egyptian regime, which the novel called "undemocratic." In an interview conducted for this study, Shafi said:

> What happened is that a lawyer took it upon himself to protect the nation and filed a complaint with the Public Prosecution saying the novel included immoral content. The police went to bookstores without an order from the Public Prosecution and confiscated all the copies that had been issued. I was then summoned to the Public Prosecution. There were two complaints filed against me. One by a lawyer and another filed by the police officer who confiscated the novel. The real problem for them was that the novel dealt with politics. They asked me what I meant by the word "democratic" and did not ask me about the nude image. The misdemeanor court ruled to confiscate all copies of the novel, prohibit its publication in the future, and fine both the author and publisher LE 10,000.[42]

General Comment 34 on Article 19 of the ICCPR

General Comment 34[43] on Article 19, prepared by the UN Human Rights Committee, states that state parties must guarantee the exercise of the rights mentioned in Article 19 of the covenant in national law in a way compatible with the guidelines issued by the committee in General Comment 31 on the nature of the general legal obligation for state parties to the covenant. State parties must provide the Human Rights Committee with relevant national laws, administrative practices, and court orders, as well as pertinent policy practices and other policies related to the rights protected under Article 19, pursuant to reports presented under Article 40 and showing due regard for the issues discussed in the general comment. State parties must also include information about remedies available if these rights are breached.

General Comment 34 explains that paragraph 1 of Article 19 requires protection for the individual's right to hold opinions without interference. The covenant permits no exception or restriction of this right. Freedom of opinion includes an individual's right to change his opinion at any time and for any reason he chooses with full freedom. No right stipulated in the covenant may be infringed on the basis of an individual's actual, perceived, or supposed opinions. All types of expression of opinion are protected, including opinions of a political, academic, historical, moral, or religious nature. Criminalizing the adoption of any opinion is incompatible

with paragraph 1, and interfering with, intimidating, or stigmatizing any person because of his opinions, including by detaining, arresting, prosecuting, or imprisoning him, constitutes a violation of paragraph 1 of Article 19.[44]

Regarding religious freedom, the general comment notes that it is incompatible with the convention to prohibit disrespect of a religion or another belief system, including through blasphemy laws. Prohibitions must also comply with the strict conditions laid out in paragraph 3 of Article 19 as well as other articles of the covenant, such as Articles 2, 5, 17, 18, and 26. So, for example, no law may discriminate in favor or against a particular religion or belief system or the adherents or believers of a specific religion. These prohibitions may also not be used to prevent or punish criticism of religious leaders or commentary on religious doctrine or tenets of faith.

As is clear, the committee's interpretation considers criticism of religions and clerics and commentary about religious issues to be an indivisible part of freedom of expression that may not be restricted outside the scope of the limits allowed by paragraph 3.

ICESCR and creative freedom

Article 15 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR)[45] obligates state parties to preserve individuals' right to participate in cultural life and enjoy the benefits of scientific progress, and respect the individual freedoms necessary for creative activity.[46] In other words, under this article the Egyptian government is bound to guarantee creative freedom, which encompasses artistic and cultural expression.

The covenant imposes on the Egyptian government an immediate obligation to guarantee the exercise of the rights stipulated in paragraph 1(a) of Article 15 without discrimination, recognize cultural practices, and refrain from interfering in their enjoyment or development.[47]

Like other rights enshrined in the covenant, the right of every individual to participate in cultural life imposes three levels of obligation on state parties: 1) the obligation to respect; 2) the obligation to protect; and 3) the obligation to fulfill. The right to respect requires state parties to refrain from interfering, directly or indirectly, with the enjoyment of the right to participate in cultural life. The right to protect requires state parties to take measures necessary to prevent third parties from interfering with this right. Finally, the right to fulfill requires state parties to take legislative, administrative, judicial, budgetary, promotional, and other measures aimed at the full realization of the right stipulated in paragraph 1 (a) of Article 15.[48]

General Comment 21 also notes that violations may occur through a direct action by state parties or other entities and institutions that are inadequately regulated by the state, in particular private entities or institutions. Violations of the right to participate in cultural life often occur when state parties prevent individuals or communities from accessing cultural life, practices, goods, or services.

Based on the foregoing, the Egyptian government commits numerous violations of paragraph 1 (a) of Article 15 by its failure to take necessary or adequate measures to meet its legal obligations under this provision. These violations, through inadequate measures designed to fully realize the right of every individual to take part in cultural life, include the failure to enforce relevant laws or provide means of administrative, judicial, or other redress to enable individuals to fully exercise this right. The Egyptian government has also failed to amend legislation that restricts the freedom of artistic and cultural expression, which includes Law 430/1955 on the censorship of artistic works, the implementing regulations of the law issued with Minister of Culture Decree 162/1993, and Minister of Culture Decree 222/1976 on censorship criteria.

Furthermore, paragraph 1 of Article 6 of the ICESCR requires state parties to respect and promote the right to work. This includes the right of every person to the opportunity to make a living by work he freely chooses or accepts. In this regard, the Egyptian government violates artists' right to work with Law 35/1976 on the artistic labor syndicates, which criminalizes making works of art without holding a membership in the relevant syndicate or obtaining a work permit from it. The Egyptian government's limitations on the right to create or join artistic syndicates violates Article 2 of ILO Convention 87 on freedom of association and protection of the right to organize, which states, "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization."

Egypt's reservations to the ICCPR and the ICESCR

Upon ratification of the ICCPR and the ICESCR, Egypt declared that it accepted, supported, and ratified the provisions of the conventions "taking into consideration the provisions of the Islamic Sharia and the fact that they do not conflict with the text."[49]

International law does permit a state party to enter a declaration or reservation qualifying its commitment to various provisions of a human rights treaty under conditions specified by those treaties. However, it does not recognize declarations and reservations that are "incompatible with the object and purpose of the treaty," in the words of Article 19(c) of the Vienna Convention on the Law of Treaties.

In its General Comment 24 on reservations to the ICCPR and the Optional Protocols to the Covenant, the UN Human Rights Committee further observed that "provisions in the Covenant that represent customary international law (and a fortiori when they have the character of peremptory norms) may not be the subject of reservations."[50] Such provisions, enumerated by the Committee, include universal protections against arbitrary deprivation of life, arbitrary arrest and detention, and denial of freedom of thought, conscience, and religion.

In its 2002 observations of the third and fourth periodic reviews of Egypt, the Committee commented:

> While observing that the State party considers the provisions of the Islamic Shariah to be compatible with the Covenant, the Committee notes the general and ambiguous nature of the declaration made by the State party upon ratifying the Covenant. The State party should either clarify the scope of its declaration or withdraw it.[51]

Egypt's declaration is best understood either as a stipulation that there are no substantive conflicts between treaty provisions and Islamic Sharia or as a stipulation that where Islamic Sharia (suitably interpreted) does conflict with treaty provisions, Egypt is released generally from any treaty obligations. If the declaration is understood in the first way, then Egypt bears all of the treaty obligations to ensure the rights of artistic freedom discussed in this report. If, on the other hand, the declaration is understood in the latter way, then arguably it undermines the object and purpose of the treaty and therefore violates the terms of the Vienna Convention. Article 2 of the ICCPR, for example, provides that state parties respect and ensure all Covenant rights "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." We conclude that Egypt's declaration is either ineffectual or impermissible under international law.

This study has cited several cases demonstrating the Egyptian government's failure to fulfill its international obligations on freedom of artistic expression, which undermines international norms and encourages non-compliance.

Standards of freedom of artistic expression in reports from the special rapporteur in the field of cultural rights

Pursuant to UN Human Rights Resolution 6/19 the special rapporteur in the field of cultural rights, Farida Shaheed, presented her report on the right to freedom of artistic expression and creativity on March 14, 2013. The report defines and discusses the legal framework for the freedom of artistic expression, legal restrictions on this freedom, obstacles placed by governments or non-governmental bodies, measures to promote the freedom, and finally a set of recommendations and conclusions.[52]

The special rapporteur urged states to undertake a critical review of national legislation and practices that impose limits on the right of freedom of artistic expression and creation while showing due regard for the relevant provisions of international human rights law, in conjunction with representatives of independent artists forums and human rights organizations. To complete

this process, the entire set of state obligations to respect and protect the right of every individual to free artistic expression must be considered.

The special rapporteur concluded the report with several recommendations, most importantly:

1. Artists and all those engaged in artistic activities should only be subject to general laws that apply to all people. Such laws shall be formulated with sufficient precision and in accordance with international human rights standards. They shall be made easily accessible to the public, and implemented with transparency, consistency and in a non-discriminatory manner. Decisions on restrictions should clearly indicate motives and be subject to appeal before a court of law.

2. States should abolish prior-censorship bodies or systems where they exist and use subsequent imposition of liability only when necessary under article 19 (3) and 20 of ICCPR. Such liability should be imposed exclusively by a court of law…

3. Classification bodies or procedures may be resorted to for the sole purpose of informing parents and regulating unsupervised access by children to particular content, and only in the areas of artistic creation where this is strictly necessary due in particular to easy access by children. States shall ensure that (a) classification bodies are independent; (b) their membership includes representatives of the arts field; (c) their terms of reference, rules of procedure and activities are made public; and (d) effective appeal mechanisms are established. Particular attention should be paid to ensuring that the regulation of access by children does not result in prohibiting or disproportionately restricting access for adults.

4. Decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision. The use of the imaginary and fiction must be understood and respected as a crucial element of the freedom indispensable for creative activities.

5. States should abide by their obligation to protect artists and all persons participating in artistic activities or dissemination of artistic expressions and creations from violence by third parties. States should de-escalate tensions when these arise, maintain the rule of law and protect artistic freedoms…

6. States should address issues regarding the use of public space for artistic performances or displays…but such regulation should not discriminate arbitrarily against specific artists or content. Cultural events deserve the same level of protection as political protests…

7. Fully implement the UNESCO Recommendation Concerning the Status of the Artist.

Looking at Egyptian government practices in light of these recommendations, we find a

substantial gap between existing freedom of artistic expression in Egypt and the reality enjoined by these recommendations, which highlights the urgency of eliminating prior censorship of art in Egypt to uphold artists' right to produce and create art.

UNESCO Recommendation Concerning the Status of the Artist

In 1980, UNESCO issued a set of recommendations on the status of the artist during the general conference held in Belgrade from September 23 to October 28. The preamble of the recommendation recognizes that the arts, in their fullest and broadest definition, are an indispensible part of life and that governments should help to create and preserve a climate that fosters freedom of artistic expression as well as the material conditions that facilitate the expression of creative talents.[53]

The general conference stressed the need to implement its recommendations, including by amending relevant legislation and legal practices to bring them into compliance. It also recommended that member states bring the recommendation to the attention of authorities and institutions that work to improve the conditions of artists and foster artists' participation in cultural life and development. Below the most significant of its recommendations are reviewed.

In terms of guiding principles, UNESCO recommended:

1. Member States, recognizing that art reflects, preserves and enriches the cultural identity and spiritual heritage of the various societies, constitutes a universal form of expression and communication and, as a common denominator in ethnic, cultural or religious differences, brings home to everyone the sense of belonging to the human community, should accordingly, and for these purposes, ensure that the population as a whole has access to art.
2. …Member States should see that artists are unequivocally accorded the protection provided for in this respect by international and national legislation concerning human rights.
3. Member States should ensure that all individuals, irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status or birth, have the same opportunities to acquire and develop the skills necessary for the complete development and exercise of their artistic talents, to obtain employment, and to exercise their profession without discrimination.

On the level of cultural policies, the conference recommended that member states take several measures, including:

1. The enhancement of the status of artists in society, for example measures relating to the employment and working and living conditions of the artist, to the provision of material and moral support for artistic activities

by the public authorities, and to the professional training of the artist.
2. The promotion of culture and art within the community, for example measures relating to cultural development, to the protection and effective presentation of the cultural heritage, including folklore and the other activities of traditional artists…
3. The encouragement of international cultural co-operation, for example measures relating to the dissemination and translation of works, to the exchange of works and of persons, and to the organization of regional or international cultural events.

Convention on the Protection and Promotion of the Diversity of Cultural Expressions

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions was issued by the UNESCO general conference held in Paris on October 3-21, 2005. Article 1 defines the objectives of the convention, including:

1. To protect and promote the diversity of cultural expressions.
2. To create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner.
3. To reaffirm the importance of the link between culture and development for all countries, particularly for developing countries, and to support actions undertaken nationally and internationally to secure recognition of the true value of this link.

The guiding principles for the convention include the principle of respect for human rights and fundamental freedoms, which dictates that cultural diversity cannot be protected and promoted if individuals are not guaranteed the ability to choose forms of cultural expression. The principle also entails that no provision of the UNESCO convention may be taken to infringe human rights and fundamental liberties enshrined in international human rights law.

The convention also establishes the principle of openness and balance, meaning that when states pursue measures to support cultural expression, they should strive to foster openness to other cultures and ensure that these measures are geared to the objectives of the convention. The convention defines cultural diversity in Article 4 as "the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies. Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used."[54]

Universal Periodic Review of Egypt, First Cycle[55]

In 2010, the UN Human Rights Council adopted the first cycle Universal Periodic Review (UPR) of Egypt, a comprehensive assessment of Egypt's compliance with international human rights

standards based on a report by Egypt, a compilation of standards by the UN, and a summary of submissions by stakeholders including other UN member states and nongovernmental organizations.[56] The report includes several recommendations made by member states, among them guarantees for freedom of religion and belief for all groups and minorities without discrimination, including in relevant legislation (Finland); the adoption of all necessary measures to provide for a free, independent media that reflects the religious, ethnic, and political plurality of opinions in Egypt (Germany); effective guarantees for the exercise of freedom of expression, association, and peaceful assembly, as well as guarantees for the right to participate in public and political life, as is consistent with the obligations enshrined in the ICCPR (Chile); a review of legislation to abolish all prison penalties for publication crimes (Netherlands); refrain from using or abusing emergency powers against journalists and bloggers exercising their right to free expression (Ireland).

According to the report of the UPR Working Group, the Egyptian government responded that some of these recommendations had been implemented or were under implementation. Recommendations that were not accepted included the recommendation to abolish prison penalties for incitement to discrimination on the basis of gender, origin, language, religion, or belief or acts damaging to individuals' honor, as submitted by the US. Other recommendations were accepted by the Egyptian government, including the need to continue its ongoing review of reservations entered to international human rights conventions and its review of national legislation to bring it into line with its obligations (Bangladesh). The Czech Republic's recommendation that Egypt review its laws and practices to ensure compliance with the ICCPR, including public and blogger access to the internet, was met with approval by the Egyptian government, as were Venezuela's recommendations to continue its successful cultural policies with far-reaching social content, and foster and extend popular participation in culture to include all as a means to combat exclusion and poverty.

Indonesia recommended that Egypt implement the accepted recommendations of the UPR in conjunction with the National Council for Human Rights, NGOs, and civil society, while Norway highlighted the need to implement an effective, comprehensive process to follow up on the UPR recommendations, abolish penal provisions that permit the imprisonment of journalists for their writings, and revise penal provisions related to journalism to explicitly state that journalists may not be imprisoned or punished solely for exercising their right to free expression.

Armenia recommended the need to foster a climate amenable to freedom of religion and belief, including by taking additional measures to promote equal rights and social peace between adherents of different religions, a recommendation seconded by Germany and Austria.

Egypt also supported recommendations submitted by Canada, Chile, and the Netherlands urging it to take additional steps to foster a free, open press where journalists may publish on

all political, social, and economic issues without fear of punishment; guarantee the exercise of freedom of expression and genuine freedom of association and assembly; and uphold the right to participate in public life and
politics, in accordance with obligations contained in the ICCPR.

37.Article 19 states:
1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(1) For respect of the rights or reputations of others;
(2) For the protection of national security or of public order (ordre public), or of public health or morals.
38.Approved for signature, ratification, and accession under UNGA Resolution 2200 (XXI) of Dec. 16, 1966. Egypt signed the convention on Aug. 4, 1967 and ratified it on Jan. 14, 1982. It entered into force on Mar. 23, 1976, pursuant to the provisions of Article 49.
39.Article 20 states:
1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.
40.AFTE, "Khitabat al-tahrid wa hurriyat al-ta'bir: al-hudud al-fasila," 2013, <http://afteegypt.org/publications_org/2013/07/30/4688-afteegypt.html>.
41.Article 19, " Prohibiting Incitement to Discrimination, Hostility or Violence," op. cit.
42.Interview with artist Magdi al-Shafi, author of Metro.
43.General Comment 34 is published on the website of Article 19, <http://www.article19.org>.
44.Article 19 states:
1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(1) For respect of the rights or reputations of others;
(2) For the protection of national security or of public order (ordre public), or of public health or morals.
45.Adopted and opened for signature, ratification, and accession by UNGA Resolution 2200A (XII) of Dec. 16, 1966; it entered into force on Jan. 3, 1976 pursuant to Article 27. Egypt signed the covenant on Aug. 4, 1967 and ratified it on Jan. 14, 1982.
46.Article 15 states:
1. The States Parties to the present Covenant recognize the right of everyone:
(a) To take part in cultural life;
(b) To enjoy the benefits of scientific progress and its applications;
(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

47.UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression, preamble, paragraph 18; see also the Universal Declaration on Cultural Diversity, Article 8.

48.General Comment 21 on paragraph 1 of Article 15 of the ICESCR, issued Nov. 2009 by the Committee for Economic, Social, and Cultural Rights.

49.The declaration is published at <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en#EndDec>.

50.Para. 8, Human Rights Committee, General Comment 24 (52), General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994).

51.Para. 5, Concluding observations of the Human Rights Committee: Egypt, UN Doc. CCPR/CO/76/EGY (2002). Available at http://www1.umn.edu/humanrts/hrcommittee/egypt2002.html; accessed 7 February 2014.

52.The report can be viewed at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/118/44/PDF/G1311844.pdf?OpenElement>.

53.See <http://portal.unesco.org/en/ev.php-URL_ID=13138&URL_DO=DO_TOPIC&URL_SECTION=201.html>.

54.Read the convention at <http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html>.

55.UN Human Rights Council, 14th session, item 6 on the agenda, document A/HRC/14/17, Mar. 26, 2010.

56.The Working Group, created pursuant to the HRC resolution of Jun. 18, 2007, convened in its seventh session from Feb. 8 to 19, 2010. Egypt's UPR was held in the 15th session convened on Feb. 17, 2010. The Egyptian delegation was led by Minister of State for Legal and Parliamentary Affairs Mufid Shehab. The Working Group approved the Egypt report in its 17th session on Feb. 19.

TESTIMONES ON CENSORSHIP

This chapter looks at various instances of the violation of creative freedom in Egypt, whether involving official censorship by state institutions like the security apparatus or ERTU, or religious censorship.

This section demonstrates the impact of the law and the censorship regime in limiting creative freedom, the failure of the state to protect artists, and the responsibility of state institutions for infringements and violations of the rights of artists and creative freedom.

The testimonies here are based on interviews conducted by researchers with AFTE’s Creative Freedom Program with artists and creators whose works were subject to censorship.

1. Testimony of Amir Ramsis[57], film director

I think the most important incident for me in terms of censorship was what happened with the film* On the Jews of Egypt*. Normally, the censorship authority does not approve a film then later ban it due to illegal pressure from certain security agencies. This type of collusion or censorship by a body other than the censorship authority, even before obtaining the permit, is a whole new thing.

Legally, no body other than the censorship authority has the right to permit or prohibit works of art. A ruling from the Constitutional Court says as much. In my case, the censor approved the film, giving it a screening permit without observations, but still, it was banned, so I consider this an extreme experience.

What happened

The script of the film was submitted to the censor, and it was approved and made. When it was screened in the week of the European Film Panorama, it was again submitted to the censorship agency. We expected to receive a permit to hold a screening for critics or journalists. This is a traditional thing to do when you present a controversial film to the festival. It means it's a permit to screen the film, but by invitation only or for journalists and critics, not the general public. This has been done numerous times with films that contain taboo subjects.

But instead the censorship authority gave us a general screening permit without reservations. This means the film has been approved. Even if the film is shown abroad, it doesn't need to be seen by any body again. Fees just need to be paid for a new permit depending on the screening or the objective (a permit to rescreen, export, or participate in a festival). This is what happened when we screened it at several festivals. The film doesn't have to be seen again [by the censors]. When it comes to commercial screenings, the permit is different in that it requires some syndicate-related documents—these are added to the documents in the file at the censorship authority—such as a receipt for fees paid to the Film Professions Syndicate or the Acting Professions Syndicate. The film does not have to be viewed again for any other permit.

This permit was delayed on very weak grounds—the accountant wasn't there that day, or the supplier, or the official who had to stamp it. This went on for two weeks until the night of the screening. The head of the censorship authority at the time, Abd al-Sattar Fathi, told me that

Homeland Security or National Security—both of these names were used—was against the film screening and refused to give us the permit.

We entered a media and legal battle. The AFTE was a party to it, and there was a wave of support in the press against what had happened. Then they backtracked. We were asked not to say that Homeland Security was the cause of the delay in the film, even though Abd al-Sattar himself had said that the reason the film was delayed was Homeland Security, and that was recorded on air. The story was changed that there was no other body exercising influence on the Ministry of Culture and the reason was that the film's documentation was incomplete.

The composer of the music for the film was asked to write a document renouncing his rights to the score to the producer, which was the same person. It was funny—Haitham al-Khemeisi was supposed to give the music rights to Haitham al-Khemeisi. And this was even though they had a document establishing that the composer was the producer. The person responsible for accepting the papers when we applied to the censorship authority the first time was the one who asked us for this. When he learned that the composer was the same person as the producer, he asked for a document proving this stamped by the censor. Even so, this, not Homeland Security, was cited as the cause for the delay. Then some 48 hours after we started mentioning the Homeland Security official who works in the Ministry of Culture by name—Hisham Farag—that's when it started winding down, when we mentioned that he wrote the correspondence between Homeland Security and the ministry. These documents had come into our possession, at the time into the possession of the Film Professions Syndicate, and it started to seem like we'd get the permit.

I personally was asked by the minister of culture to append a paper at the beginning of the film saying that the characters in the film were fictional creations of the author and director, and the film established no political rights for these characters—even though it was a documentary. All the characters are real people talking about their problems. I decided not to do this. I'd received the permit and there was no call for it, but then I saw it as a chance to show the way they think. I asked for an official document from the Ministry of Culture to this effect and told them that I would not endorse the statement. We got the document, stamped by the censorship authority and written the way they wanted, and we showed it at the beginning of the film. Then we placed a statement after it from the filmmakers that the foregoing permit was issued by the Ministry of Culture and in no way represented the views of the filmmakers. Then the film started showing in cinemas.

The material impact of this experience on the film producer was that the film was delayed for two weeks. After having reserved cinemas and planned for the first screening, suddenly there was no film and the cinemas had to find another film. The film stayed in theaters only four weeks. We had to withdraw it because of the theaters' schedules and agreements with other

films. So it could have shown for two additional weeks—half the time of its actual run—and of course this entailed material losses for the producer and distributor.

Problems of censorship in Egypt

For me, the problem with censorship is that theoretically, there is no authority above the censorship agency. Even the minister of culture himself doesn't have the right to interfere with the censorship authority's work. But in practice, this isn't the case. Ultimately, the censorship authority is subservient to the head of the authority himself and his willingness to make deals and compromise. When a film is put before him, he isn't required to consult al-Azhar—he has authority according to the law—but he doesn't want any problems with a religious body. And, of course, there has always been a tendency to choose an agreeable head for the agency. I think this is the biggest problem with censorship. It doesn't apply only to my film, but to many that have faced the same problem, like *I Love the Cinema* and *In Natural Colors*, by director Osama Fawzi, which was originally called *Nude Drawings*.

I think that political and religious topics are the most controversial for the censorship authority, meaning you can't broach these topics. I also think that the religious establishment is less of a problem for the censorship authority—it's more an attempt [by the authority] to appease society, particularly after January 25. There has always been an attempt to prove that the censorship authority is a pious authority, it's always trying to outdo itself there. As for sexual issues, society exercises very strict self-censorship.

I also think there is a close link between censorship and social awareness. They are mutually reinforcing, as is clear over the last ten years. Social censorship influences official censorship and they both influence social awareness, which again impacts social censorship. It's a circle, and this is clear in the concept of "clean cinema." Ten years ago, there were two, equally strong positions on it, for and against. That's not the case now, one position prevails because of the accumulated weight of social censorship.

On self-censorship

Certainly, most artists or producers self-censor. Regarding production, you have a group of production companies with a clear agenda that engages in strict self-censorship. So recent daring films head to the other group of companies. But these films aren't really that daring. In comparison with the 1970s, they're very conservative actually. So I think that every director or producer engages in some degree of self-censorship.

The experience where I've most suffered from censorship is a project that didn't get off the ground, the film *The Field Marshall and the President*, which was rejected because it dealt with two specific people. That's official censorship. As for social censorship, we can count the spate

of lawsuits filed by Islamists against artists like Adel Imam, Sherif Arafa, Nader Galal, and Wahid Hamed, basically a legal assault on their complete works.

Censorship of works from abroad

Regarding works from abroad, these are subject to the same censorship authority and the same criteria for official and social censorship. In fact, on the past few years, the censor has started to use the copies that have already been censored in the Gulf. So we're getting films that have gone through a censorship body even stricter than the Egyptian censorship authority. So now it's quite normal to cut many things in films that come from abroad.

My proposals for censorship in Egypt

I think something like a human rights committee could be created in the censorship authority, to take the side of the artist and creativity instead of the censor. It could be a voluntary committee because the artist isn't necessarily familiar with all the laws that regulate filmmaking. It could also look at precedents from other cases, like in American law. If there's a film facing a problem that another film has had in the past, we look at the old case. I made this proposal in sessions of the People's Assembly but a majority dismissed it.

Civil society

I also think that civil society has not been effective enough recently. In the end, there are no cases for organizations to intervene in except for court cases, things with a legal aspect, like the groups that stood in solidarity during the case of Adel Imam and Sherif Arafa. But with the cases that reach the courts, I'm not sure that they can play an effective role except in documenting them for reference. I think this is due to the prevailing circumstances and policies in Egypt.

57.Born in 1979, Amir Ramsis is an Egyptian film director. After graduating from the direction department of the Cinema Academy in 2000, he directed several short and long fiction films as well documentaries. He is the director of the documentary film The Jews of Egypt, which faced several problems with the censors.

2. Testimony of Ahmad Abdalla[58], film director

"*I'm originally a film editor, and my studies before film editing were in music. I've work in the film industry, which is my current work.*"

Censorship

My previous films have not clearly encroached on the censorship taboos, so I've had no direct experience with bans related to the censorship of artistic works. Recently, though, I faced a different type of censorship related to a filming permit. I was prohibited from filming in a mosque for my latest film (2013). We had a scene that was to be filmed in a mosque, and the Ministry of Endowments, the official body in question, refused to give us the permit to film.

This refusal lasted for six or seven months, as we searched for a solution, but they would not let us film and gave us no alternative solution. In the end, we filmed in a disused mosque under the purview of the Ministry of Antiquities, which cost us about 15 times as much as we would have paid if we had been allowed to film in one of the Ministry of Endowments' mosques.

The Ministry of Endowments does not ask for any real money to open the mosque, but instead takes fees for very procedural things. You pay to open the mosque at certain times, but it's a small fee, no more than LE 1,000 for example. The biggest mosque in Egypt would cost LE 2,000. But with the Ministry of Antiquities, the situation is totally different. You're treated as if you're renting a historical site, like the Citadel, so the cost is many times over the amount you would pay if you were using a mosque under the Ministry of Endowments. Usually, the sum is LE 30,000 or LE 50,000 or LE 100,000, it's not a set amount, but depends on the type of project, your relationship with them, and other considerations.

The long-standing censorship trinity

I can't really add anything new because in the end you move within the framework of the long-standing trinity of religion, sex, and politics, and the whole "we don't want films that touch on these areas."

In general, the form of permits is intentionally incapacitating, even if the censor approves the film. For example, you submit the script and it's approved and passes the censors. They write on it: the film has been approved by the art works authority, with the final opinion of the censor to come after a viewing of the film. So this approval has no value until after the film is seen. And

then they add observations like the following:

1. No mention of the police or army, on active duty or inactive, in any way whatsoever.
2. Avoid scenes of smoking, water pipes, and drugs.
3. Avoid dealing with clerics in any way whatsoever.

In the end, following these observations, you can't even show a chase scene between a policeman and a thief, even as just a classic scene with no connection to politics. You can't. Or you can't show the hero in a scene praying the Friday prayers, for example.

None of these scenes could be put in a movie if you follow the observations from the censor. So your film may have an officer, a mosque, or a church, and the script with these things has been approved, but these observations actually prohibit it.

The idea is that they're immunizing themselves in case something happens later, so they can argue that they gave you these observations. They're civil servants who are protecting themselves and aren't interested in creative work and how to direct movies.

But these observations are not always observed except in major cases because we're certainly subject to censorship, and if the censor has initially given you this sort of document, that's a kind of oversight of the text.

Censorship and its impact on social development

I don't think there's a big crisis. That doesn't mean I think censorship is a good thing. We've seen important films that were done despite the suppression, just like films were made in the US in the period of strict censorship in the 1960s. Kuwait, too, despite severe censorship and social and political repression has produced important films. In Saudi Arabia, the film *Wadjda* is challenging basic social mores. Even so the film was shown on the BBC and in several other important places.

I don't think censorship can stop the creativity in any society. Iran is the best example of this.

There is some positive aspect to censorship, unfortunately, in the legal sense. If someone alleges that a certain film defames society or Islam or whatever, the reason that these charges don't go anywhere is because the censor approved the film. This happened with *The Yaqoubian Building*. The People's Assembly asked the minister of interior or the minister of culture—I don't remember which—to take action against the film, but the producer said that the film had passed the censors, all the scenes had been approved by the censorship authority, and the film added no scenes that had not been approved. This was the grounds for ending the crisis.

Unfortunately, the censorship authority is the body that provides legal protection against these circumstances. It protects us as artists from criminal liability.

Social censorship

This also isn’t a big obstacle. If a person wants to see a particular film, he finds a way to see it, and if a person wants to avoid it, he does. Just as there are many people who don’t want to see a scene with a kiss in a movie, there are others who refuse to see a film that’s been cut. We see this in the cinema, for example, when there’s open revolt if the cinema has deleted a certain scene, for reasons related to the desire to understand the scene.

Self-censorship

Of course, we all do this. I was doing a film based on stories from real people. Some of the stories deal with the issue of sexual preference, and the author of the story did not realize how much harm his story could do him. We have to do this from time to time, but we always find back doors to do it without the censor prohibiting you.

Groundbreaking cases

I don’t think there are groundbreaking cases in the real sense of the word. For example, the court order issued in favor of director Khaled Youssef to allow a film about the field marshal—this precedent doesn’t mean that I can then make a film about the same topic.

It’s more an issue of personal relationships and the relationship with the censor. You may be able to persuade the censors of something that someone else can’t. But I do see this ruling as a very progressive thing. Everything is done amicably and in the end it’s all geared to protecting the state and the censors more than being about freedom of expression.

Ministry of Culture and art

I was on the committee tasked by the Ministry of Culture to support cinema. The ministry has a budget—LE20 million—to promote the cinema. I’m talking about cinema in particular. The committee was composed of me, Youssri Nasrallah, Samir Farid and others. That was more than a year ago, but we didn’t stay on the committee for many reasons. Despite this, we did some basic things.

I specifically was against having to have a permit from the censor as a condition for a grant and the same for syndicate membership, because these restrict artists. The only condition was that the person be a producer and be ready to actually make the film. There had to be a company that was legally set up. The committee waged a huge battle against making the censor’s approval a condition. We also insisted that the conditions of the grant not include being a graduate of the Cinema Academy or a member of the syndicate, to prevent restrictions that might obstruct important projects.

We heard later that employees with the Ministry of Culture refused to execute the films without

the condition of censorship. Some people rejected this because censorship was not officially a condition, and they went ahead and made their films without censorship interference, like for example the director Ibrahim al-Batout.

The role of the syndicate in censorship

This is a very repressive role, linked to film permits because we're in a police state. To film, you need a permit from the Interior Ministry and maybe from the army. If you're standing near the sea—any sea—you need to consult with the army, even if you're just filming a scene of a person standing on the beach.

The Interior Ministry speaks to no body except the Film Professions Syndicate, which uses this as a source of strength. Permits for outdoor location filming are only given to syndicate members. If you aren't a member, you have to pay a huge sum, which you can't afford if you're a film lover, for example, or a university student and you want to make a film with your friends. You can't do it without the syndicate.

The syndicate requires the submission of three or five contracts from previous work—I can't remember how many exactly. After these contracts are submitted, you pay a sum, which is basically a fine for working in cinema. The approvals are always late because the syndicate meets once every six months or so, and so you can be delayed for years.

It's very hard. The syndicate also demands money from your work, ostensibly to support others in your field who aren't working. It's a respectable argument, but I don't think it serves art. For years I worked as a film editor and my entire wages would go to the syndicate, without me benefitting anything.

Suggestions for censorship

In cinema, the quantity of permits you need must be changed because they prevent many people from executing their projects. Secondly, I suggest that the censorship regime become an age-classification scheme. For all practical purposes, we know that anyone who wants to see something can do it, with the development of the media and alternative media.

Thirdly, I propose that the censors themselves not be artists, so that their personal creative vision does not interfere with the evaluation. I suggest the censor be a critic, for example, not the producer of a creative work.

The work of civil society institutions

In the current conditions, I think they're doing the best they can. In the end, they're small institutions confronting state interference.

On a representative of the Defense Ministry on the committee to improve cinema

I think this is important. There's a representative from the Interior Ministry so there should be one from the Defense Ministry because the military establishment contributes to the curtailment of film creativity. We want to hear from them whether they will support improvements in cinema or whether things will remain the same.

We don't want them just for looks. They're really a part of what happens in cinema. There are certain types of cameras permitted in many countries and they're necessary to do many kinds of scenes, but the army does not permit them.

58.Ahmad Abdalla is an Egyptian artist. Originally a film editor, he later turned to independent cinema. He wrote and directed *Heliopolis*, his first feature, followed by *Microphone* and most recently *Rags and Tatters*.

3. Testimony of Ali Talbab and Youssef Rakha on music and social taboos[59]

Elmanzoma, a band

Elmanzoma (The System) sings about social taboos in an attempt to provoke people by putting them up against things that happen in their lives that are not new, but are not spoken of.

Censorship

“

Ali Talbab: ***Elmanzoma is an independent band so we're not directly subject to censorship. Once, when we played our songs in Talaat Harb Square to celebrate a book that documented the graffiti of the January 25 revolution, we were attacked by some passersby because we were singing in the street. A policeman approached us but it wasn't a violent response.***

A concert by Elmanzoma at the Opera House was also cancelled. It was supposed to be on June 29, 2013, but it was postponed because of security conditions. It never took place, even though other musicians had the concert.

”

The band's songs are largely spontaneous. One of the recent songs was recorded, written, and arranged a few hours after dawn. It got a large response from Elmanzoma fans.

Youssef Rakha: We don't work based on any written rules. We don't know what we want and where we're going with our work. Our thinking changes, and this gives us a margin of creative freedom.

State censorship is not as influential as social censorship. Society and individuals are the key. Someone might say that the songs contain obscene language. This happens in our social circles, where someone decides to attack us because we sing against social rot.

Once in a concert at the Garage Theater, a member of the audience threatened to beat up the singer because he was singing a Sufi song that spoke about God in a way outside the normal Islamic framework.

AT: State censorship grows out of social censorship because society is what guards it in the end. In general, the role of music and art is to break social taboos.

Censorship at the Sawi Culture Wheel[60]

AT and YR: This is worse because it is a place that is ostensibly to support art, but instead it censors musicians by asking them to submit the lyrics of their songs before concerts so they can be approved as morally and politically permissible.

AT: Once I gave them the words to a song and changed them, but I sang the original lyrics at the concert.

A similar thing happened at Cairo University. I had to submit the song lyrics for a permit, so they could make sure there were no political connotations. I changed the lyrics to get the permit, but I sang the original words at the concert. The concert was stopped by security, but the public insisted on finishing it.

The beauty of censorship

AT: Censorship is beautiful because it makes a person fight for his rights and freedoms because society and the censor will not create spaces for freedom.

YT: The beauty also lies in the fact that we are independent, and suffer to produce our work and concerts because we're not part of a production company that facilitates things. This is part of our emancipation.

Society

YR: Shocking society is not a goal in and of itself, but more of a way to express what we have, and we think it's good if it has an impact and makes someone in the space think. Our art is not all directed at people, but it's a way of expressing ourselves in the form of music that we participate in with people.

AT: It's a way of saying, I'm here.

YR and AT: Social ferment has developed among the younger generations in society in a big way. They are breaking social taboos that older generations could not do in the same way.

YR: If the revolution did anything, it made people think about things they hadn't thought of before.

Impact of censorship on art and artists in society

AT: Censorship doesn't make sense with the internet. If the censor bans something, someone will turn to the internet.

YR: The obstacle here is if you want to take the band's artistic product another step. If you expect material returns, you must make censorship part of your expectations.

AT and YR: They agree that this keeps them in their place and may limit their audience, which might be people are like them.

AT: This forces us to do other things for money. It's a harsher situation for producing our art.
YR: The state of independent musicians is worse in this age. It's impossible for an artist to live only on his art, for it to give him a stable material life to meet his daily needs.
AT and YR: in concerts, they speak with the crowd and sing for and with them.
AT: A wider audience came to know us with the revolution because at that time people listened to anything being said, in an attempt to think about it before rejecting it. Now, the limits of the acceptable have broadened.

The Musicians Syndicate and censorship

YR: [commenting on how the Musicians Syndicate treats those without a permit or non-members] It makes no sense for the artist to need a permit to create or to judge whether he has a good voice or not. Meanwhile the Musicians Syndicate leadership is now very shallow. The art is made for the army, the state, and the regime.
Both Talbab and Rakha were astonished at how the Musicians Syndicate finds musicians giving a concert without a permit, even in a non-public place, like a home or a private studio. Once they were attacked by a person with the syndicate at a private concert in a non-public place. In such cases, the syndicate levies a fine and the offender is detained at the prosecution by Central Security Forces.

Independent venues

Independent venues such as al-Geneina, Rawabit, al-Rasif, and the Garage do not impose censorship, but the financial transactions at the Mawrid al-Thaqafi, which oversees the Geneina Theater, is very difficult in most cases for artists who deal with them.
AT: I practice it [self-censorship] when I write lyrics. I think about how the listeners will receive them, but I've recently begun to free myself of that. Let the audience accept it or not.
YR: The current situation takes us back to the time when if someone insults the army, he's arrested. Censorship is not the state, but people. Our music comes from people. This is very hard, closed censorship because we can't know or see what people are thinking. This leads us to avoid contracting with a production company that might censor us or tell us what lyrics to sing. We've had offers from several television programs but we refused because this will impose some censorship on us, even on Bassem Youssef's program. We don't want fake fans.

59.Elmanzoma is an independent hip-hop band whose songs are about social conflict in Egypt. Ali Talbab, the group's main singer, writes the songs with Youssef Rakha.
60.The Sawi Culture Wheel is a cultural center hosting various musical and theater productions and arts exhibits. It is also a space where young artists and amateurs may connect with the public.

CONCLUSION AND RECOMMENDATIONS

This study has explored legislative and institutional restrictions on freedom of artistic expression in Egypt and analyzed the legal framework governing the censorship of artistic works and the standards used by the various censorship bodies.

It is the opinion of AFTE and Freemuse that current legislation and censorship practices are neither transparent nor in accordance with international conventions.

Artistic creativity, the cultural industry, and Egyptian citizens are affected negatively by this.

We therefore offer the following recommendations to the Egyptian government and the people of Egypt:

1. The Egyptian government should amend relevant arts legislation to make it compatible with international standards for freedom of expression as enshrined in international human rights law and especially conventions to which Egypt is a party.

2. The Egyptian government should repeal all legislation that imposes prior censorship of freedom of artistic expression, in particular:

a. Law 430/1955 on the censorship of artistic works.

b. The implementing regulations for the censorship of artistic works, issued with Prime Ministerial Decree 162/1993.

c. Minister of Culture Decree 222/1976 on standards for the censorship of artistic works.

3. The Egyptian government should amend legislation that criminalizes artistic expression, in particular:

a. Law 35/1976 on the Federation of Artistic Syndicates, which criminalizes engaging in artistic work for non-members of the syndicate or those who do not obtain a permit to practice an artistic profession.

b. Provisions of the Penal Code that criminalize forms of expression on the grounds of protecting public decency, public order, religions, and the reputations of others: at a minimum, exempt artistic expression from the scope of these provisions and at most repeal them due to their contravention of provisions of international human rights law that protects freedom of expression.

4. The Egyptian government should dissolve the current censorship regime and replace it with a system of age-classification for artistic content, without interfering in, deleting, or modifying content, while showing due regard for the representation of artists in the administration of this system.

5. The Egyptian government should regulate the use of public spaces for artists to permit them to connect with their fans without unnecessary legal or bureaucratic restrictions.

6. The body tasked with drafting the constitution should prohibit any unnecessary censorship of artistic expression and criminalize any prior censorship.
7. The Egyptian government should allow artists to form trade unions, in accordance with the ILO conventions binding on Egypt.